United States Court of Appeals for the Second Circuit



APPENDIX

74-2005

United States Court of Appeals

FOR THE SECOND CIRCUIT

C. H. Coster Gerard, Sumner Gerard, Jr., James W. Gerard, II, and Chemical Bank, Executors of the Estate of Sumner Gerard, Deceased.

Petitioners-Appellant,

-against-

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

APPENDIX

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Commissioner of Internal Revenue

Department of Justice

Washington, D.C. 20530



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TAX COURT GENERAL DOCKET

TAX COURT OF THE UNITED STATES

GENERAL DOCKET

1a

York Trus	nner Gerard, Chemical Bank st Company, C. H. Coster Gerard, d. Jr., James W. Gerard, II, Execu-	tors	DOCKET NO.	5573-69
TE OF SUR ster Gera rard, Ur Park Ave York, N.)	ATTER-GERTARD; Deceased; C:-H: ard; James V: Gerard; IF; Samme - G Chemical Bank; Executors	APPEARANCES FOR PETIT	ll, David R. I	Lindskog,. s, Mallet-P:
Date	RESPONDENT.			
Date Day Year	Filings and Proceeding	ngs	Action	Served
7, 1969	PETITION FILED: FEE PAID NOV 7	, 1969		Nov 14, 15:
7, 1969	Req by petr for trial at New Yo	ork	GRANTED Nov 14, 1969	Nov 14, 195
7, 1969	E/A, David R. Lindskog, Counse	1 for petr		Nov 14, 195
	E/A, Robert D. Whoriskey, Couns	sel for petr		Nov 14, 19=
	ANSWER filed by respondent.			JAN 1 4 1973
	NOTICE of change of address for			July 1, 1970
17, 1970	MOTION by Petr. to set case for t at New York, N.Y.	rial on Jan. 25, 1970,		
18. 1970	AFFIDAVIT in support of motion to ORDERED that caption of this case NOTICE of filing petrs motion to	is amended	ed.	Aug. 19, 1970 UG 1 9 1970
	HRG. on Oct. 14, 1970 Wash. D.C.			
	1970)			Aug. 19,1970
3, 1970	is set for trial on Jan. 25, 197			Sept. 10,1973
	and further			
	ORDERED, that the case is stricken	from the motions		
	session on Oct. 14, 1970, Wash.,	D.C.		
6,27,1971 1,2,1971				
	Stipulation of Facts w/exhibits			
	continued to page 2			
				Form No. 34 March 1-67

CKET NO.

(Continuation)

Date Date	R GERARD, ETC.	PETITIONER	PAGE 2
onth Day Year	Filings and Proceedings	Action	Served
	Petioioners Memorandum in opposition to subpoena Du	ces	
	Tecum served upon attys for petitioners. Mr. Leitner recognized for this case only BRIEFS due April 19, 1971		P
	REPLY BRIEFS due May 24, 1971		
	SUBMITTED TO JUDGE QUEALY.		
Feb. 6,1971	TRANSCRIPT of Jan 26,27, 2/1,2/2 - RECEIVED (3 vols.)		
	BRIEF for Petitioner filed.		
ril 19, 1971	BRIEF for Respondent filed.		April 20, 1
y 24, 1971	REPLY PRIEF for Petitioners filed		
24, 1971	REPLY BRIEF for Respondent filed		May 26, 197
. 13, 1972	FINDINGS OF FACT & OPINION filed Judge Quealy		May 26, 1977 Mar. 13, 19
	(Decision will be entered under Rule 50		
11, 1974	AGREED COMPUTATION FILED		
. 15, 1974	DECISION ENTERED BY, JUDGE QUEALY.		Apr. 15, 19
	APPELLATE PROCEEDINGS		
12, 1974	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.		July 15, 197
	NOTICE of Filing with copy of notice of appeal sent to		, , , , , , , , , , , , , , , , , , ,
	Chief Counsel, Mr. Meade Whitaker.		July 15, 197
15, 1974	NOTICE, to parties, of assembling and date for trans-		oury 1), 1),
	mission of record.		July 15, 1971
		·	
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US To asury Department

1. 3a

STATUTORY NOTICE



District Director

Internal Revenue Service

OCT 1 1969

AU:R:90D

Tel. 264-3109

Estate of Summer Gerard Chemical Bank New York Trust Company Et al Executor 277 Park Avenue New York, New York 10017

Gentlemen:

In accordance with the provisions of existing Internal Revenue laws, notice is given that the determination of the estate tax liability of the above-named estate disclosed a deficiency of \$4,111,906.38. The attached statement shows the computation of the deficiency.

If you do not intend to contest this determination in the Tax Court of the United States, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed pre-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess the deficiencies and take action to collect the tax. However, if within the time stated you contest this determination by filing a petition with the Tax Court, we may not assess any deficiencies for these years until after the Tax Court has decided your case.

You may obtain a copy of the rules for filing a petition with the Tax Court by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D.C. 20044.

Sincerely yours,

Randolph W. Thrower

Commissioner

Ву

District Director

Enclosures: Waiver, Form 870 Statement Envelope

4a

Estate of Sumner Gerard Chemical Bank New York Trust Company Et al Executor 277 Park Avenue New York, New York 10017

Date of Death:

March 10, 1966

ESTATE TAX

	Assessed	Deficiency
Liability		\$4,111,906.38
\$5,561,957.37	\$1,450,050.99	

In making this determination of the Federal estate tax liability of the above-named estate, careful consideration has been given to the return, Form 706, the report of examination dated May 21, 1969, and all data contained in the file.

In accordance with the Power of Attorney in the file, a copy of this letter and statement has been mailed to John P. Campbell, Esq., c/o Curtis, National Colt & Mosle, 63 Wall Street, New York, New York, 10005.

ADJUSTMENTS TO TAXABLE ESTATE

Taxable estate as disclosed by return		\$3,800,019.10
Additions to tatable estate: (a) Stocks and bonds (b) Mortgages, notes and cash (c) Other miscellaneous property (d) Transfers during decedent's life (e) Funeral, etc. expenses	\$2,058,435.21 25,610.03 759,648.49 3,371,919.33 363,371.94	6,579,185.00 \$10,379,204.10
Total Deductions from taxable estate: (f) Charitable bequests Taxable estate as corrected	\$ 621,581.31	\$ 9,757,622.79

EXPLANATION OF ADJUSTMENTS

	Return	Determined
(a) Schedule B - Stocks and Bonds		
Added Item 8(a)	\$ -0-	\$ 37.50
Added Item 26(a)	-0-	1,338.75
Added Item 30(a)	-0-	6,625.50
Added Item 39(a)	-0-	70.00
Added Item 55(a)	-0-	181.90
Added Item 56(a)	-0-	3,489.60
Item 68	1,903,800.00	3,661,671.45
Item 69	509,237.22	640,322.93
Item 70	210,022.21	243,271.01
Item 72	-ó-	124,486.00

Addition to taxable estate

\$2,058,435.21

Added Items 8(a), 26(a), 30(a), 39(a), 55(a) and 56(a) represent accrued dividends determined to be includible in the gross estate.

Item 68 represents ownership of 57 shares of capital stock of Aeon Realty Company. The determined value of \$3,661,671.45 for this item is held to constitute the fair market value as of the date of death based upon consideration of all relevant facts and elements of value.

Item 69 represents ownership of 137 shares of capital stock of Immer Realty Corporation. The determined value of \$640,322.93 for this item is held to constitute the fair market value as of the date of death based upon consideration of all relevant facts and elements of value.

Item 70 represents ownership of 500 shares of Old Lyceum Building Company capital stock. The determined value of \$243,271.01 for this item is held to constitute the fair market value as of the date of death based upon consideration of all relevant facts and elements of value.

Item 72 represents ownership of 2680 shares of The Ennis Company capital stock. The determined value of \$124,485.00 is held to constitute the fair market value as of the date of death based upon consideration of all relevant facts and elements of value.

	Return	Determined
(b) Schedule C - Mortgages, notes and cash Added Item 7(a) Item 12 Item 14	\$ -0- 4,708.26 -0-	\$ 110.03 5,208.26 25,000.00
Addition to taxable estate	\$25,610.03	

Added Item 7(a) represents accrued interest on Certificate of Deposit No. 7-001629 in Chemical Bank New York Trust Company. Said accrued interest is determined to be includible in the gross estate.

6a

Item 12, representing personal loans receivable, is determined to be includible in the amount of \$5,208.26.

Item 14, representing an amount due from The Ennis Company on a loan, is determined to be includible in the gross estate in the amount of \$25,000.00, the full face value.

	Return	Determined
(c) Schedule F - Other Miscellaneous property		
Item 9	\$232,948.05	\$283,595.50
Added Item 10	-0-	667,122.06
Added Item 10(a)	-0-	36,097.97
Added Item 11	-0-	5,981.01
Addition to taxable estate	\$759,848.	49

Item 9, representing decedent's interest in the Estate of Mary D. Gerard, is determined to be includible in the gross estate at a value of \$283,595.50 based upon consideration of all relevant factors and elements of value.

Added Item 10 represents the amount claimed as a refund on the decedent's Federal Cift Tax return for the year 1954. A timely claim for refund was filed on Form 843 by the estate representatives in the amount of \$667,122.06 for said Cift Tax return. The allowable portion of the claim has not been finally determined. The full amount claimed, \$667,122.05, is determined to be includible in the gross estate.

Added Item 10(a) represents accrued interest to the date of decedent's death on the amount determined to be includible for Item 10 above. Said accrued interest is determined to be includible in the amount of \$36,097.97.

Added Item 11 represents the amount claimed as a refund on the decedent's Federal Gift Tax return for the year 1965. A timely claim for refund was filed on Form 843 by the estate representatives in the amount of \$5,981.01 for said Gift Tax return. The allowable portion of the claim has not been finally determined. The full amount claimed, \$5,981.01, is determined to be includible in the gross estate.

	Return	Determined
(d) Schedule G - Transfers during decedent's life		
Item 4 (1964 transfer)	-0-	\$3,276,232.35
Item 5 (1964 transfer)	-0-	29,724.99
Item 6 (1985 transfer)	0- `	65,961.99
Addition to taxable estate	\$3,371,91	9.33

Item 4 represents 17 shares of capital stock of Aeon Realty Company transferred by the decedent in 1964 to each of his three sons for a total of 51 shares transferred. Said total shares are determined to be includible in the gross estate at a total value of \$3,276,232.35 pursuant to section 2035 of the Internal Revenue Code of 1954. The determined includible value is based upon consideration of all relevant facts and elements of value.

Item 5 represents mineral interests in the State of Alabama and cash of \$9,075.00 transferred by decedent in 1964 equally to each of his three sons. Said mineral interests and cash are determined to be includible in the gross estate pursuant to section 2035 of the Internal Revenue Code of 1954 at a total combined value of \$29,724.99, computed as follows:

Mineral interests	\$20,649.99
Cash	9,075.00
Total	\$29,724.99

The determined includible value of the mineral interests is based upon consideration of all relevant facts and elements of value.

Item 6 represents a 3/36 ths interest in Texas property transferred by decedent in 1965 equally to each of his three sons. Said total interest transferred is determined to be includible in the gross estate pursuant to section 2035 of the Internal Revenue Code of 1954 at a total value of \$65,961.99. The determined includible value is based upon consideration of all relevant factors and elements of value.

	Return	Do	etermined
(e) Schedule J - Funeral, etc., expenses			
Item B-13	\$100,000.00	\$	-0-
Item B-14	1,386.00		-0-
Item B-15	100.95		-0-
Item B-28	111,884.99		-0-
Item B-30	150,000.00		-0-
Addition to taxable estate	\$363,371.9	1	

The above items have been disallowed for administration expense deductions as not being within the purview of section 2053 of the Internal Revenue Code of 1954 and/or for lack of substantiation.

	Return	Determined
<pre>(f) Schedule N - Charitable bequests Item 1</pre>	\$699,265.26	\$1,320,846.57
Deduction from taxable estate	\$621,581,31	

The charitable deduction has been redetermined to reflect the adjustments herein made and to allow a charitable deduction of ten percent (10%) of the gross estate pursuant to the provisions of the decedent's will.

COMPUTATION OF ESTATE TAX

Taxable estate as	corrected		\$9,757,622.79
Gross estate tax Less: Credit for	Federal Gift Tax:		\$5,903,993.32
Return	Determined		
-0-	\$342,035.95		342,035.95
Gross estate tax Tax assessed	less credit for Federal Gi	ft Tax	\$5,561,957.37 1,450,050.99
Deficiency Credit for State be allowed:	death taxes which may	\$1,039,878.66	\$4,111,906.38
Credit for foreig be allowed:	n death taxes which may	4,318.29	1,044,196.95
Net deficiency			\$3,067,709,43

Credit for Federal Gift Tax has been allowed pursuant to section 2012 of the Internal Revenue Code of 1954 after reducing the amounts of Gift Tax paid for the years 1964 and 1965 by the amounts claimed as refunds for those years.

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U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

DATE RECEIVED !

FORM 890 (REV. NOV. 1957) TRANSLUCENT

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY AND ACCEPTANCE OF OVERASSESSMENT

Pursuant to the provisions of section 6213 (d) of the Internal Revenue Code of 1954 or corresponding provision of prior internal revenue laws, the undersigned executor or administrator waives the restrictions provided in section 6212 (a) and 6213 (a) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws and consents to the assessment and collection of the following deficiency, together with interest on the tax as provided by law, and accepts the following overassessment as correct:

ITEM	DEFICIENCY	OVERASSESSMENT
TAX Estate	\$ 4,111,906.38	s
PENALTY		
TOTAL	\$ 4,111,905,38	s

ESTATE OF	By (Executor or Administrator)
Summer Gerard	
DATE	ADDRESS (Executor or Administrator)

Note.—The execution and filing of this form will expedite the adjustment of the tax Hability as indicated above. It have ver, a final closing agreement under section 7121 of the Internal Revenue Code of 1954, and does not, therefore, it is asset tion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

TAX COURT OF THE UNITED STATES

FILED

C. H. COSTER GERARD, SUMNER GERARD, JR., JAMES W. GERARD, II, and CHEMICAL BANK, Executors of Estate of Sumner Gerard, Deceased,

1969 HOV 7 AM 10.47

Petitioners,

v.

Docket No.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

5573-69

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Ref: AU:R:90D), dated October 1, 1969 and as the basis for their case allege as follows:

1. Petitioners qualified on March 24, 1966 in Surrogate's Court, New York County, as executors under the Will of Sumner Gerard (the "decedent"), who died a resident of New York, New York, on March 10, 1966 (the "date of death"). The legal residences of the individual petitioners C. H. Coster Gerard, Sumner Gerard, Jr. and James W. Gerard II, as of the time of filing hereof, were in New York, New York, Princeton, New Jersey and Bar Harbor, Maine, respectively. The corporate petitioner's principal office and principal place of business, as of the time of filing hereof, was in New York, New York. The estate tax return (Form 706) was

filed with the District Director of Internal Revenue, Manhattan District, New York.

- 2. The Notice of Deficiency (a copy of which is attached hereto and marked as Exhibit A) was mailed to petitioners on October 1, 1969.
- 3. The deficiency, as determined by the Commissioner, is in estate tax in the amount of \$4,111,906.38, all of which is in dispute.
- 4. The determination of the tax set forth in said Notice of Deficiency is based on the following errors:
- (a) That petitioners failed to include in the gross estate the following accrued dividends:

No. Sha	res Stock	Dividends
100 1575 4417	Bethlehem Steel General Motors International Business	\$ 37.50 1,338,75
100 428 4362	Machines National Dairy Products Standard Oil (Ind.) Standard Oil (N.J.)	6,625.50 70.00 181.90 3,489.60

- (b) That the fair market value of 57 shares of capital stock of Aeon Realty Company on the date of death was in the amount of \$3,661,671.45;
- (c) That the fair market value of 137 shares of capital stock of Immer Realty Corporation on the date of death was in the amount of \$640,322.93;
- (d) That the fair market value of 500 shares of capital stock of Old Lyceum Building Company on the date of death was in the amount of \$243,271.01;

- (e) That the fair market value of 2,680 shares of the capital stock of The Ennis Company on the date of death was in the amount of \$124,486.00;
- (f) That petitioners failed to include in the gross estate accrued interest on Chemical Bank New York Trust Company Certificate of Deposit No. 7-001629 in the amount of \$110.08;
- (g) That personal loans receivable should be includible in the gross estate in the amount of \$5,208.26;
- (h) That a loan due from The Ennis Company should be includible in the gross estate in the amount of its full face value, \$25,000.00;
- (1) That decedent's interest in the Estate of Mary D. Gerard should be includible in the gross estate in the amount of \$283,595.50;
- (j) That petitioners failed to include in the gross estate the full amount of a Federal gift tax refund claim for 1964 in the total amount claimed, \$667,122.06;
- (k) That petitioners failed to include in the gross estate accrued interest to the date of death on the 1964 Federal gift tax refund claim in the amount of \$36,097.97;
- (1) That petitioners failed to include in the gross estate a Federal gift tax refund claim for 1965 in the total amount claimed, \$5,981.01:
- (m) That the decedent in 1964 transferred 17 shares of the capital stock of Aeon Realty Company to each of his three sons in contemplation of death within the meaning of

section 2035 of the Internal Revenue Code of 1954 (the "Code") and that petitioners failed to include in the gross estate the fair market value of such shares in the amount of \$3,276,232.35;

(n) That the decedent transferred in 1964 certain mineral interests in the State of Alabama and cash equally to each of his three sons in contemplation of death within the meaning of section 2035 of the Code and that petitioners failed to include in the gross estate the fair market value of such items, as follows:

Mineral	interests	\$20,649.99
Cash		9,075.00
Total		\$29,724.99

- (o) That the decedent transferred in 1965 a 3/36 interest in Texas property equally to each of his three sons in contemplation of death within the meaning of section 2035 of the Code and that petitioners failed to include in the gross estate the fair market value of such interest in the total amount of \$65,961.99;
- (p) That the following administration expenses are not deductible by petitioners under section 2053 of the Code and/or for lack of substantiation:

<u>ltem</u>	Amount
Estate office management charges F.I.C.A. taxes Premium disability policy	\$100,000.00 1,386.00 100.95
Interest on loan Interest, Federal estate tax Total	111,884.99 150.000.00 \$363,371.94

- 5. The facts upon which retitioners rely as the basis of this case are as follows:
- (a) The decedent, as of the date of death, owned 5? of the 108 outstanding shares (52.8%) of Aeon Realty Company ("Aeon"), a corporation organized in 1912 under the laws of New York.
- (b) Aeon was a closely held corporation as of the date of death with no public market for its outstanding shares of stock. Prior to the date of death, there had been no sales of any of Aeon's shares of stock.
- (c) Aeon was an operating real estate corporation at the date of death. Aeon was conducted at all times prior to decedent's death as a going concern with no intention of having Aeon liquidated in whole or in part. Decedent's 52.8% ownership of Aeon stock was insufficient under New York law to effect Aeon's liquidation.
- (d) Aeon's assets as of the date of death consisted primarily of real estate and of shares in its wholly-cwned subsidiaries, Aeonitt Realty Corporation ("Aeonitt"), a corporation organized in 1932 under the laws of New York, and Lake Gerard Company ("Lake Gerard"), a corporation organized in 1954 under the laws of New Jersey. The principal assets of these subsidiaries were improved and unimproved real estate.
- (e) The following factors are determinative in establishing the fair market value of decedent's 57 shares of Aeon stock on the date of death:
 - (1) Size of the block involved.
 - (2) Status of Aeon as a going concern at the date of

death and inability and unwillingness of decedent to liquidate Aeon.

- (3) History of Aeon, nature of its business, and its management.
- (4) Financial condition of Aeon and an analysis of its assets and invested capital, particularly as at December 31, 1965 and March 10, 1966.
- (5) Book value of Aeon as at the date of death reflecting both cost and market value of real estate and securities owned.
- (6) Operating results of Aeon, particularly for 1965, the year immediately preceding the date of death.
- (7) The outlook for Aeon as at the date of death.
- (8) Bases by which investors were appraising companies that could be compared with Aeon.
- (9) Dividends paid by Aeon, dividend pay-out and dividend paying capacity of Aeon.
- (10) Discount of Aeon stock for lack of marketability.
- (11) Other relevant factors affecting fair market value.
- (f) The value of the real estate owned by Aeon at the date of death, as determined by independent expert appraisers, was as follows:

Real Estate	Value
36 E. 31st St., N.Y.C. Middle Island, L.I.	\$1,040,000
(Davis) land Shelter Island land Springs, L.I land	289,200 940,100 17,100

(g) The value of the real estate owned by Aeonitt at the date of death, as determined by independent expert appraisers, was as follows:

Real Estate			Value		
32 W 34 W	lest lest	53rd 53rd	Street,	N.Y.C.)	\$ 400,000

				[7]	r	Tog
	Re	al Es	tate			Value
37 39	West West	53rd 53rd	Street,	N.Y.C.) N.Y.C.)	\$33	30,000
40	West	53rd	Street, Street, Street,	N.Y.C.)	67	75,000
48	West	53rd	Street,	N.Y.C.)	30	00,000
51	West	53rd	Street, Street, Street,	N.Y.C.)	68	000,000
52	West	53rd	Street, Street, Street,	N.Y.C.)	80	0,000

Montauk Point -- Land

Shelter Island -- Land

(h) The value of the assets owned by Lake Gerard at the date of death, as determined by independent expert appraisers, was as follows:

59,700

300,000

Assets	Value
Lake Gerard-Land, building	
equipment, etc. Great South Beach	\$775,000
(Rao)Land	114,600

(i) As of the date of death, the following is a summary of the principal assets of Aeon, Aeonitt and Lake Gerard:

Total real estate		\$6,720,700
Common Stocks		
Incorporated Investors		
11,115 shares U.S.Trust Co., 1,680	83,300	
shares	146,600	229,900

17a

Bonds

U.S. Treasury Delaware-Lackawanna-Western Railway-4% 1992 113,900

4,200 118,100

Mortgages and real estate loans receivable

130,700

Total investments (market value)

\$7,199,400

- (j) At the date of death, the book value, net of deferred lease expense, of Aeon was \$1,233,800 and the investment appreciation was \$4,981,900, resulting in a total value for Aeon of \$6,215,700.
- (k) As a result of applicable discounts, the fair market value of the 57 shares of Aeon stock owned by decedent at the date of death was \$1,903,800, or \$33,400 per share.
- of the 140 outstanding shares of the Immer Realty Corporation ("Immer"), a corporation organized in 1935 under the laws of New York. The other three shares were owned by the Sumner Gerard Foundation, a corporation organized in 1964 under the laws of Delaware. On the date of death, Immer's principal asset, a leasehold interest relating to 23-25, 27-29 West 51st Street, New York, New York, had a value of \$750,000.00.

- (m) After applicable discounts, the fair market value of decedent's 137 shares of Immer at the date of death was \$509,237.22.
- (n) At the date of death, decedent owned all of the 500 cutstanding shares of stock of Old Lyceum Corp. ("Old Lyceum"), a corporation organized in 1911 under the laws of New York.
- (o) The value of the assets of Old Lyceum, exclusive of its interest in Woodland Shores Inc., ("Woodland") at the date of death was as follows:

Asset		Value
27 E. 73rd St., N.Y.C. Securities Other investments less liabilities		\$150,000.00 22,703.10 11,302.33 (15,675.22)
	Total	\$168,330.21

- (p) The real estate located at 27 E. 73rd St. was independently appraised at \$150,000 as of the date of death. It was sold subsequently pursuant to a Surrogate's Court order for \$160,800.
- (q) Old Lyceum at the date of death also owned 28 of the 57 cutstanding shares of Woodland, a corporation organized under the laws of New York. The value of the assets of Woodland

at the date of death was as follows:

Assets

Real Estate, 3-mile Harbor Cash		\$ 83,000.00 1,892.96
U.S. Treasury Bonds less liabilities		45,000.00 (276.54)
Value of Old Lyceum's	Total	\$129,616.42
		\$ 63,512.00

- (r) After applicable discounts, the fair market value of decedent's 500 shares of Old Lyceum on the date of death was \$210,022.21.
- (s) Decedent had an outstanding loan in the amount of \$25,000 to The Ennis Company, Inc., a Montana corporation, which loan had no value at the date of death.
- (t) A personal loan by decedent to the Nomina Corp. in the face amount of \$500.00 had no value at the date of death and consequently the total value of decedent's personal loans at the date of death was \$4,708.26.
- (u) Decedent's 3/36th interest in the Estate of Mary D. Gerard had a fair market value after applicable discounts as of the date of death of \$232,948.05.
 - (1) Decedent's interest in stock and bonds held by the Estate of Mary D. Gerard had a fair market value in the amount of

\$131,753.47 at the date of death.

(2) Decedent's interest in real estate and mineral interests held by the Estate of Mary D. Gerard was \$113,455, as of the date of death computed as follows:

Real estate	Value
Shelter Island Springs	\$ 33,296.00 605.00
Montauk Shelter Island Northwest	2,113.00
Northwest Hampton Bays	1,347.00 3,263.00 1,196.00
Lloyd's Neck Fire Island	15,124.00
Shelter Island Rams Neck	17,779.00
Louisiana Real Property Louisiana Mineral Interests	17,551.00 2,500.00
Total	\$113,455.00

- (v) Decedent's gift on January 2, 1964 of 17 shares of Aeon stock to each of his three sons and subsequent gifts on April 27, 1964 and August 27, 1965 to each such son were not made in contemplation of death. These gifts were motivated rincipally by a desire to help the family of one son of the eccedent with large medical, educational and business expenses, and to equalize the gifts among his other two sons.
- (w) The following office management expenses are dministrative expenses deductible in full under Section 2053 f the Code:

Salaries \$ 75,000.00
Rent 25,000.00

Employer's share of estimated Social Security lax on wages to be paid to manager of real property for the period 3/10/66 to 3/9/71

1,386.00

No

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Zurish Insurance Co. Premium Disability Policy No. 1849957 for manager of real property for period 4/1/66 to 3/10/71 at \$20.19 per annum.

100.95

Total \$ 101,486.95

- (x) Interest in the amount of \$111,884.99 on a April 12, 1965 can to decedent from Chemical Bank New York Trust Company for the period from the date of death to June 10, 1969 is an administrative expense deductible in full under Section 2053 of the Code. The loan was paid in full on May 22, 1968 and interest to that date from the date of death totaled \$94,702.45.
- (y) Estimated interest of \$150,000 on the delayed payment of Federal estate taxes is an administrative expense deductible in full under Section 2053 of the Code.
- (z) Decedent owned 2,680 out of 4,000 outstanding shares of The Ennis Company Inc., a Montana corporation, which at the date of death were worthless.
- (aa) On the date of death, dividends accrued on stock cwned by decedent were as follows:

. Shares	Stock	Dividends
00 75 17	Bethlehem Steel General Motors International	\$ 37.50 1,338.75
00 28 62	Business Machines National Dairy Products Standard Oil (Ind.) Standard Oil (N.J.)	6,625.50 70.00 181.90 3,489.60
	Total	\$11,743.25

- (1) On the date of death, decedent's account at Chemical Bank (#007-210957), reflected a deposit in the amount of \$11,981.35, which was \$238.10 more than the total amount of said accrued dividends.
- (2) Said deposit in the amount of \$11,981.35, (except for the Standard Oil (Ind.) accrued dividend in the amount of \$181.90) included the accrued dividends set forth in subparagraph (1) of this paragraph. Said deposit in the amount of \$11,981.35 was included in full as a cash asset of the gross estate in the Federal estate tax return (Form 706) filed by petitioners herein.

WHEREFORE petitioners pray that the Court may try case and determine that there is no deficiency in estate and provide such other or further relief as the Court in discretion deems just and proper.

Campbell, VEsq.

63 Wall Street

New York, N. Y. 10005

STATE OF NEW YORK)

COUNTY OF NEW YORK)

JAMES M. CLARK being duly sworn says that he is a Vice President of Chemical Bank, an executor under the Will of Sumner Gerard, deceased, that said bank is a petitioner herein, and that he has read the foregoing petition and is familiar with the statements contained therein and believes them to be true.

James 4 Clark

Sworn to before me this

of day of The le-

1969.

Notary Public

MARY C. C'DOHERTY Natury Lublic, State of New York 113, 41-8194705

Quality of an Queens County Certificates Low in How York, Kings, Richmond, Lruna, Posteriology, Nazura and Sufficial County Commission Expires (1990), 1970

TAX COURT OF THE UNITED STATES

C. H. COSTER GERARD. SWINER GERARD. JR. ED JAMES W. GERARD, II, AND CHEMICAL BANK, EXECUTORS OF THE ESTATE OF SUMMER GERARD, ANSWER 1010 JAN 12 F. DECEASED, 15 Petitioner,

Docket No. 5573-69

24a

COMMISSIONER OF INTERNAL REVENUE,

v.

Respondent.

ANSWER

THE RESPONDENT, in enswer to the petition filed in the aboveentitled case, admits and denies as follows:

- 1, 2 and 3. Admits the allegations of paragraphs 1, 2 and 3 of the petition.
- 4. (a) through (p) Denies that the respondent erred as alleged in subparagraphs (a) through (p) of paragraph 4 of the petition.
- 5. (a) Admits that the decedent, as of the date of death, owned 57 of the 108 outstanding shares of Ason Realty Company. Denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition.
- (b) Admits that Aeon was a closely held corporation as of the date of death. Denies the remaining allegations of subparagraph (b) of paragroph 5 of the petition.
 - (c) Denies the allegations of subparagraph (c) of paragraph

5 of the petition.

- (d) Admits that Aconitt Realty Corporation and Lake

 Gerard Company were wholly owned subsidiaries of Acon. Denies

 the remaining allegations of subparagraph (d) of paragraph 5

 of the petition.
- (e)(1) through (11) Denies the allegations of subparagraph(e)(1) through (11) of paragraph 5 of the petition.
- (f) through (k) Denies the allegations of subparagraphs(f) through (k) of paragraph 5 of the petition.
- (1) Admits that at the date of death, the decedent owned 137 of the 140 outstanding shares of Immer Realty Corporation Admits further that at the date of death, Immer owned a leasehold interest. Denies the remaining allegations of subparagraph (1) of paragraph 5 of the petition.
- (m) Denies the allegations of subparagraph (m) of paragraph 5 of the petition.
- (n) Admits that at the date of death, decedent cwned all the outstanding shares of Old Lyceum Corp. Denies the remaining allegations of subparagraph (n) of paragraph 5 of the petition.
- (o) and (p) Denies the allegations of subparagraphs (o) and (p) of paragraph 5 of the petition.
- (q) Admits that Old Lyccum at the date of death owned 28 of the 57 outstanding shares of Woodland. Denies the

remaining allegations of subparagraph (q) of paragraph 5 of the petition.

- (r) Benies the allegations of subparagraph (r) of paragraph 5 of the petition.
- (s) Admits that decedent had an outstanding loan in the amount of \$25,000 to The Ennis Company, Inc. Denies the remaining allegations of subparagraph (s) of paragraph 5 of the petition.
- (t) and (u)(1)&(2) Denies the allegations of subparagraphs (t) and (u)(1)&(2) of paragraph 5 of the petition.
- (v) through (as) (1) and (2) Denies the allegations of subparagraphs (v) through (as) and subdivisions (1) and (2) of subparagraph (as) of caragraph 5 of the petition.
- 6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined

by the respondent be in all respects approved.

(Sgd) K. MARTIN WORTHY - JJM

K. MARTIN WORTRY,

Chief Counsel,

Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
AGETHA L. VORSANCER,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 16607.

27a

STIPULATION OF FACTS UNITED STATES TAX COURT

ESTATE OF SUMMER GERARD, C.H. COSTER GERARD, SUMMER GERARD, JR., JAMES W. GERARD, II, and CHEMICAL BANK, Executors,

Petitioners,

Docket No. 5573-69

V.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective counsel, for the purpose of this case, that the following facts shall be taken as true, without prejudice to the right of either party to introduce other and further evidence of facts not inconsistent herewith, or to object to the introduction in evidence of any such facts, including the facts stipulated herein, on the grounds of immateriality or irrelevancy.

IT IS FURTHER STIPULATED AND AGREED that no waiver, concession or admission shall arise by reason of the use of words or phrases which might have special significance under the Internal Revenue Code.

1. Petitioners are executors under the Will of Summer Gerard (the "Decedent"), who was born on August 25,

1874, and died a resident of New York, New York, on March 10, 1966 (the "date of death").

- 2. The legal residences of the individual petitioners C.H. Coster Gerard, Sumner Gerard, Jr. and James W. Gerard, II, as of the time of filing of the Petition herein, were New York, New York; Princeton, New Jersey; and Bar Harbor, Maine, respectively. The corporate petitioner's principal office and principal place of business, as of the time of filing of the Petition herein, was New York, New York.
- 3. The estate tax return (Form 706) was filed with the District Director of Internal Revenue, Manhattan, New York and is attached hereto and marked as Exhibit A.
- 4. Decedent was admitted as a patient to New York Hospital, 525 East 68th Street, New York, New York, prior to the date of death, as follows:

Date of Admission	Date of Discharge
August 7, 1959	October 25, 1959
December 18, 1964	January 6, 1965
December 5, 1965	December 13, 1965
February 7, 1966	March 10, 1966 (date of death)

Copies of hospital records covering each admission are submitted herewith as Exhibits 1, 2, 3 and 4.

5. Decedent was the father of three sons, C.H. Coster Gerard ("Coster"), Sumner Gerard, Jr. (Jerry) and James W. Gerard, II.

- 6. Decedent, during his lifetime, was involved in real estate management and investment.
- 7. Aeon Realty Company ("Aeon"), a corporation organized under the laws of the State of New York, was a real estate holding and operating company. Aeon had 108 shares of issued and outstanding capital stock during the period involved herein, all of which until January 2, 1964 were owned by the decedent. On January 2, 1964, the decedent gave each of his sons, Coster, Jerry and James, 17 shares of Aeon stock (total 51 shares). Coster, Jerry and James owned such Aeon stock at the date of death. The parties agree that if the Court holds that the foregoing gifts of a total of 51 shares of Aeon stock was a gift in contemplation of death within the meaning of Section 2035 of the Internal Revenue Code of 1954 that the value as of the date of death was \$40,996 per share.
- 8. Decedent made no prior taxable gifts, except for certain gifts in trusts for his three sons in 1935.
- A copy of decedent's will, attested August
 1965, is submitted herewith as Exhibit 5.
- 10. Copies of decedent's Federal gift tax returns for the years 1964 and 1965 are submitted herewith as Exhibits B and C.
- 11. Copies of decedent's Federal Income Tax

 Returns for the years 1961 to 1965, and the year ended

 March 10, 1966, are submitted herewith as Exhibits 6 to 10-1 RDW ALV

- 12. The Ennis Company, a corporation organized under the laws of the State of Montana, owned and operated a cattle ranch (the "Ennis Ranch") in Ennis, Montana.
- 13. The Ennis Company was formed on December 31, 1958 and elected to comply with the requirements of Subchapter "S" of the Internal Revenue Code. It continued to so qualify from December 31, 1958 to the date of death.
- 14 From the date of its organization, up through the date of death, the decedent owned 2,680 shares of the outstanding capital stock of the Ennis Company, which was approximately two-thirds of its outstanding stock.
- 15. On June 6, 1957 the decedent sent a check in the amount of \$25,000 to Metals Bank & Trust Company, Butte, Montana ("Metals Bank") which reduced the Ennis Company's loan account.
- 16. The decedent sent a letter, dated December 21, 1959, to Metals Bank, a copy of which is submitted herewith as Exhibit 11.
- 17. On August 4, 1961 the decedent, in a letter of that date, a copy of which is attached hereto as
 Exhibit 12, directed Chemical Bank New York Trust Company to transfer 100 shares of stock of International Business
 Machines ("IBM") to Metals Bank. In a letter dated August
 4, 1961 to Erwin P. Frizelle ("Frizelle"), President of Metals Bank, (a copy of which is submitted herewith as Exhibit

- 13) the decedent indicated his intention to place 100 shares of IBM as additional security for the loan to the Ennis Company.
- 18. On March 18, 1963 the decedent caused 200 additional shares of IBM stock to be sent from Chemical Bank to Metals Bank as security for the loan to the Ennis Company.
- 19. A copy of the General Loans Ledger, maintained by Metals Bank for the account of the Ennis Company for the period from February 1, 1954 is attached hereto as Exhibit 14.
- 20. Attached hereto as Exhibit 15 is a copy of a letter dated August 16, 1961 from Frizelle to Jerry Gerard.
- 21. Attached hereto as Exhibit 16 is a copy of a letter dated August 23, 1961 from Jerry Gerard to Frizelle.
- 22. Attached hereto as Exhibit 17 is a copy of a letter dated March 27, 1963 from Frizelle to Jerry Gerard.
- 23. Attached hereto as Exhibit 18 is a copy of a letter dated April 8, 1963 from Frizelle to Jerry Gerard.
- 24. Attached hereto as Exhibit 19 is a copy of a letter dated April 20, 1963 from Jerry Gerard to Frizelle.

25. Jerry Gerard received the following income distributions from the Estate of Mary D. Gerard, deceased:

			, , , , , , , , , , , , , , , , , , , ,
Year	Date of Distribution	Amount	Total for Year
1956	6/21/56	\$ 4,000	
	8/29/56	10,000	\$ 14,000
1957	1/21/57	4,000	
,*	5/6/57	6,000	
	8/27/57	6,000	16,000
1958	1/10/58	6,000	
	4/21/58	6,000	
	8/22/58	2,000	14,000
1959	1/15/59	2,000	
	4/10/59	2,000	
	8/13/59	1,730	5,730
1960	1/14/60	2,000	
	4/7/60	2,000	
	8/2/60	2,000	6,000
1961	1/5/61	2,000	
	4/4/61	2,000	
	8/17/61	2,000	
	11/15/61	2,000	8,000
1962	8/15/62	1,000	
	8/27/62	4,000	
	11/19/62	1,600	6,600
1963	2/14/63	1,500	
	5/15/63	1,200	

Year	Date of Distribution	Amount	Total for Year
	8/8/63	1,200	
	11/15/63	1,200	5,100

. 26. Jerry Gerard received distributions of principal from the Estate of Mary D. Gerard as follows:

	Miscellaneous	
Date of Distribution	Type of Property	Amount Credited
12/6/56	Silverware	\$ 809.25
12/6/56	Chinaware	250.00
7/24 to 10/30/57	Furniture, etc.	4,149.10
12/12/58	Jewelry	960.00
7/23/57	Montana Inheritance Tax Paid	7.39
12/31/57	La. Inheritance Tax Paid	709.59
	Securities and Cash	
Date of Distribution	Subject	Value Credited
10/14/57	Standard Oil of N.J. Stock (1500 shares)	\$79,875.00
3/25/58	IBM Stock (100 shares	34,700.00
12/21/61	Aluminum Ltd. Stock (448 shares)	11,984.00
12/21/61	Creole Petroleum Stoc (248 shares)	9,982.00
12/21/61	Crystal Oil Stock (644 shares)	4,628.75

Securities and Cash

9.

Date of Distribution	Subject	Value Credited
12/21/61	Kennecott Copper Stock (48 shares)	3,891.00
12/21/61	Texas Utilities Stock (248 shares)	24,676.00

27. The following statement of principal and income to Jerry Gerard distributions/has been extracted from the Judicial Settlement of the Final Account of Proceedings of Sumner Gerard as Trustee of the Trusts for James W. Gerard, II, Sumner Gerard, Jr. and Charles Henry Coster Gerard, created by Sumner Gerard by Trust Deeds dated December 26, 27 and 28, 1935 respectively, on the application of Chemical Bank New York Trust Company, James W. Gerard, II, Sumner Gerard, Jr. and Charles Henry Coster Gerard, as Executors of the Last Will and Testament of Sumner Gerard, deceased Trustee.

PRINCIPAL DISTRIBUTIONS

None

INCOME DISTRIBUTIONS

Year	Amount
1957	\$12,400.00
1958	7,278.08
1959	8,782.69
1960	9,564.54
1961	11,559.60

tio

Year 1962

1963

Amount

9,707.22

11,864.22

Counsel for Petitioners

(Sgd) K. MARTIN WORTHY - A.

Dated: February , 1971

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mony on those points should that testimony become available. May I call my first witness?

THE COURT: You may.

MR. WHORISKEY: I call Mr. Robert L. Ayers.

THE CLERK: Do you solemnly swear that the testimony you are about to give the Court in this case is
the truth, the whole truth, and nothing but the truth,
so help you God?

MR. AYERS: I do.

THE CLERK: Take the stand, be seated please, and will state your name and home address for the record please, Sir?

THE WITNESS: Robert L. Ayers, 201 Governors Boulevard, Billings, Montana.

THE CLERK: How do you spell your last name, please?
THE WITNESS: A-y-e-r-s.

THE CLERK: Thank you.

ROBERT L. AYERS, called as a witness, having been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION BY

MR. WHORISKEY:

.

Q Mr. Ayers, what is your occupation?

A I'm the personal manager and accountant for Summer Gerard, Junior, or Jerry Gerard.

n-To-Go

Ayers - Direct

1	Q For how long have you known Sumner Gerard, Junior?
2	A Since 1961.
3	Q I will refer to Summer Gerard, Junior hereafter as
4	Jerry Gerard. What is your accounting background, Mr. Ayors?
5	A I attended the Billings Business College at Billings
6	and majored in accounting, plus the practical experience of
7	working with the various books of accounting.
8	Q Are you familiar with Yellowstone Feed and Cattle
9	Company?
10	A Yes.
11	Q How did you become familiar with it?
12	A I was hired by a Marshall Young, who in conjunction
13	with Jerry Gerard, set up the company in 1961, and I did all
14	books at that point.
15	MRS. VORSANGER: /I am wondering if the witness could
16	speak a little louder, Your Honor.
17	THE COURT: Will you try to speak a little louder,
18	Mr. Ayers, please.
19	BY MR. WHORISKEY:
20	Q Was Yellowstone Feed and Cattle Company a corporation
21	A Yes.
22	O Do you know what state in which it was organized?
23	A Montana.
24	Q Do you know when it was organized?
25	A 1961.

- 1	
1	Q Are you able to testify as to the initial capital-
2	ization of Yellowstone Feed and Cattle Company?
3	A Yes.
4	Q Ame the original books and records of Yellowstone
5	Feed and Cattle Company in this courtroom?
6	A Yes, they are.
7	Q What was contributed to capital of Yellowstone
8	Feed and Cattle Company in 1961?
9	A The initial capital was mad
10	MRS. VORSANGER: Your Honor, I'm sorry, the books
11	will speak for themselves with respect to that matter.
12	THE COURT: The witness is an accountant and the
13	books are here available for cross examination. Objection
14	overruled.
15	BY MR. WHORISKEY:
16	Q Would you proceed to answer that question, Sir?
17	A The initial capitalization was \$50,000, I believe.
18	Q Do the books disclose how much was contributed by
19	Summer Gerard, Junior?
20	A Yes.
21	Q How much?
22	A \$25,000.
23	Q Do the books also disclose how much was contributed
24	by the other stockholder?

A · Yes.

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Court, no objection pending before the Court.

MRS. VORSANGER: I am going to object to it, Your Honor, on the basis of relevance.

THE COURT: Well, you will have to object to the next question them, Mrs. Vorsanger. Your prior question was an inquiry which counsel has answered.

MRS. VORSANGER: Fine, Your Honor.

THE COURT: Thank you.

BY MR. WHORISKEY:

Q In what business was Yellowstone Feed and Cattle
Company engaged?

MRS. WORSANGER: I am going to object to this, Your Honor, on the basis of relevancy.

THE COURT: Overruled.

BY MR. WHORISKEY:

Q Please answer the question.

A It was involved in livestock feeding, which includes the purchase of feeder cattle and also feed, and combining these items into fed cattle.

Q In other words, Yellowstone Feed and Cattle Company would purchase cattle, feed them, and then what would they do?

λ They would sell cattle as fat cattle, it is a sales
word derived from the sale of fed cattle.

Q How long would the cattle be held?

A This would vary on class of cattle, and could run

1	from ninety days to a year and a half.
2	THE COURT: Wouldn't a year and a half be unusual
3	though?
4	THE WITNESS: Not necessarily so, if it were a
5	THE COURT: I mean, for a feeder lot?
6	THE WITNESS: If it were a cow, if it had been put
7	in at a weight of 400 pounds.
8	THE COURT: Normal feeder lot, how long were able
9	(inaudible) the cattle (inaudible).
10	THE WITNESS: 150 to 180 days, maybe, normally.
11	BY MR. WHORISKEY:
12	Q Incidentally, Mr. Ayers, were you an employee of
13	Yellowstone Feed and Cattle Company?
14	A Yes.
15	Q Were you ever an officer?
16	A Yes.
17	Q When?
18	A I believe this was approximately 1965 when I became
19	an officer.
20	Q But you were an employee from the inception of the
21	company?
22	A Yes.
23	Q How did Yellowstone Feed and Cattle Company finance
24	the purchase and feeding of cattle?
25	A It was done on a revolving credit with the First
	National Bank at Billings.

tion-To-Go Office Service

Mr. Ayers, did the guarantee cover debts of the

Yellowstone Feed and Cattle Company to the First National Bank

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BY MR. WHODISKEY:

1	\	Yes.
2	Q	Did it cover any other debts?
3	A	No.
4	Q	Was the guarantee limited as to time?
5	A	No, it was open-and so far as time.
6	Q	Do you know whether or not Yellowstone Feed and Cattle
7	Company	in 1961 realized a net profit?
8	Λ	It did.
9	Q	Do you know in what amount?
10	A	In excess of \$3,000.
11	Q	Do you know whether the Yellowstone Feed and Cattle
12	Company	realized a net profit in 1962?
13	A	Yes.
14	Q	Do you know in approximately in what amount?
15	λ	This was excess of \$15,000, between \$15 and \$20,000
16	Q	Do you know whether Yellowstone Feed and Cattle
17	Company	realized a net profit in 1963?
18	Α	I do.
19	Q	Did it?
20	À	No.
21	Q	Did it realize a loss?
22	A	Yes.
23	Q	Do you know in what amount?
24	Λ	In excess of \$80,000.
25	Q	What caused that loss in 1963?

1	A This was caused by the fall of the livestock market.
2	Q Would you please explain that.
3	A The livestock business has cycles whereby the prices
4	of various animals rise and fall, and beginning in 1962, and
5	going through '64, the market continued to fall on fed cattle
6	as well as feeders at a latter date.
. 7	Q Did prices fall below the price at which Yellowstone
8	Feed and Cattle Company have purchased it cattle?
9	A Yes.
10	Q Substantially below it?
11	A Yes.
12	Ω What did Yellowstone Feed and Cattle Company do
13	during 1963 to obtain funds to continue operations?
14	MRS. VORSANGER: Your Honor, I assume that this man
15	is speaking from his personal knowledge.
16	THE COURT: I would assume so, Mrs. Vorsanger.
17	MRS. VORSANGER: May that be made clear in the
18	record, please?
19	MR. WHORISKEY: Is the witness speaking from his
20	personal knowledge?
21	THE WITNESS: Yes.

Q Sir, I repeat the question I put to you a moment

ago. Do you know what Yellowstone Feed and Cattle Company did

in 1963 to obtain financing to continue its operations?

tion-To-Go Office Service

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1	Λ	Yes.
2	Q	What did it do?
3	A	It sold cattle or liquidated some inventory, but
4	in addition	on, additional monies were contributed.
5	Q	Did it increase its open account indebtedness for
6	feed and	supplies?
7	A	Yes.
8	Q	Substantially?
9	Λ	Yes.
0	Q	Did it obtain additional funds from First National
1	Bank?	
2	A	No, only on a revolving credit base.
3	Q	Did it obtain additional funds from any of its
4	shareholde	ers?
5	Α	Yes.
6	Q	Do you know from whom?
7	A	Summer Gerard.
8	Q	Junior?
9	Α	Yes.
0.0	Q	Do you know in what amounts?
21	Α	In 1963, a specific amount of \$45,000.
22	Q	Were there additional, and when was that contribute
3	by Summer	Gerard Junior to Yellowstone Feed and Cattle Company
4	during 196	53?
25	Λ	Approximately May 1.

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Were any additional amounts contributed by Jerry Q Gerard to Yellowstone Feed and Cattle Company during 1963?

Yes.

Approximately in what amount? Q

A Approximately \$6,000.

And were these amounts sufficient to enable Yellow-O stone Feed and Cattle Company to continue its operations during 1963?

A Yes.

Do you know whether there was a substantial danger, as of the end of 1963 that the Yellowstone Feed and Cattle Company would suffer substantial losses during the following year?

MRS. VORSANGER: Objection, Your Honor.

THE COURT: Sustained. I would suggest to counsel that, while Mrs. Vorsanger hasn't objected to any of this the testimony in itself is quite meaningless to the Court without a balance sheet. This proves nothing so far --

MR. WHORISKEY. We can introduce the balance sheet, Your Honor.

THE COURT: -- as far as personal interpretation of i is concerned. If you wish to proceed, proceed.

BY MR. WHORISKEY:

Did Yellowstone Feed and Cattle Company incur any

25 merating losses for 19647

THE COURT: Does counsel for the respondent have 1 any objection to admission in evidence of this statement? 2 Por what it purports to be, anyway, a statement taken 3 from --4 MRS. VORSANGER: I assume, Your Honor, that I will 5 be given an opportunity to look at the underlying records. 6 THE COURT: You will. 7 MRS. VORSANGER: Then I have no objection. 8 THE COURT: Received in evidence. 9 THE-CLERK: Exhibit 101. 10 BY MR. WHORISKEY: 11 Mr. Witness, I hand you Exhibit 101, and ask you 12 to refer to the statement of income and expenses for Yellow-13 stone Feed and Cattle Company for the period ended December 14 31, 1963. In what amount are the losses? 15 Off \$89,062.29. 16 I now hand you Exhibit Number 102 for identification. 17 Would you please describe that Exhibit? 18 This is an auditor's report of Yellowstone Feed and A 19 Cattle Company. 20 For what period of time? Q 21 A Dated December 31st, 1964. 22

presently in the courtroom?

Is that report prepared from books and records

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MRS. VORSANGER: Your Honor, I would have been glad to --

THE COURT: -- the attributes of not having a stipulation, and that's the basis on which we are going to proceed. We are not going to stop and allow each Exhibit be examined in detail as we put it in evidence, Mrs. Vorsanger.

MRS. VORSANGER: But Your Honor, some of these items were presented to me last night, Your Honor.

THE COURT: Well, I'm sorry, but I say that's the

BY MR. WHORISKEY:

Q I hand the witness Exhibit Number 102, refer the witness to the statement of income and expenses for the year ended December 31, 1964. In what amount are the losses of that year?

A \$84,829.26.

Q Thank you. Mr. Ayers, I now direct your attention to a different matter. Are you familiar with the Ennis
Company?

A Yes.

Q Was the Emmis Company a corporation?

A Yes.

Q During what period of time?

. 1	MR. WHORISKEY: I am trying to make this relevant-
2	now, Your Honor, if I may.
3	BY MR. WHORISKEY:
4	Q Are you familiar with an event, Mr. Ayers, that
5	occurred in 1965 on the Ennis Ranch that had an affect on
6	its records?
7	A Yes.
8	Q What happened?
9	A On December 3rd a fire destroyed the home and his
10	office.
11	Q And it was December 3rd, 1965?
12	A Yes.
13	Q Did the fire completely destroy the home?
14	A Yes.
15	Q Did it destroy all of the records of the Ennis
16	Company?
17	A No.
18	Q Do you know what records it did destroy?
19	A It destroyed all of the ledgers, general journals,
20	the bank statements, cancelled checks, invoices original
21	invoices.
22	— Q Did you have an occasion on or after December 3rd,
23	1965, to inspect the burned home and office of the Ennis
24	Company?
25	A Yes,

in order to discuss this matter with him?

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THE COURT: Yes.

THE COURT: --Gerard, do you know whether or not the Ennis Company was a sub-chapter S corporation? Do

you know what that means?

MR. WHORISKEY: It was.

THE COURT: It was. I see. And I notice here that in these Exhibits I might ask Mr. Whoriskey, is the purpose of these Exhibits to show the financial condition of the Ennis Company?

MR. WHORISKEY: Sir, the purpose of the Exhibits to which you refer, the balance sheets of the Ennis Company, is to demonstrate several things. First of all the Ennis Company did not operate at a profit during the years involved.

THE COURT: Well, I ask that question, Mr. Whoriskey because I assume that this was a cow herd. Exhibit A-1, which sets forth the inventory of livestock is not included in these documents, so that they aren't complete in themselves.

Also, in an operation like this speaking generally they are supposed to show a loss. I think that's part of the -- that's the name of the game, as advertised in The Wall Street Journal and elsewhere on cow herds, so

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-- but these Exhibits without Exhibit A-1, which has not been included and should be a part of it, the Court would completely disregard it.

MR. LEITNER: Pardon me, can Your Honor identify the year in which the --

THE COURT: Every year Exhibit A-1 is missing, which is very pertinent if you are going to look at what the reavalue or solvency or condition of the company is. If you have a thousand cows here, carried at \$10,000 here for one year, that would make a great difference.

MR. WHORISKEY: Your Honor, may I ask the witness those questions? Put those questions to the witness? Your Honor, we do have available Exhibits A-1, which appear on the tax returns, copies of which we have --

THE COURT: Well, I would only say this to counsel; that whether inadvertently or otherwise this was received as representing a form of report and as such it is incomplete, and I am rather disappointed that it is incomplete in a very material area. In the area which I would look to, really, before I could give any weight to these documents whatsoever.

perhaps counsel can exchange some additional financial information here that we can put into the record without the necessity of burning down the house.

1 THE COURT: So that to the extent that the figures 2 shown on 131 may vary in small amounts from the tax 3 returns, that does not -- we would not draw the inference from that that there were any other loans to shareholders 5 other than Mr. Gerard? 6 THE WITNESS: Correct. 7 MRS. VORSANGER: May I cross examine, Your Honor? 8 THE COURT - You may. CROSS EXAMINATION BY 9 10 MRS. VORSANGER: Mr. Ayers, did you do accounting work for other 11 individuals except Jerry Gerard and his companies? 12 13 Yes. 14 Starting when? Q During 1960 to 1961, during that period. 15 And after you began to work for Jerry Gerard and 16 Q his companies, did you work for anyone else? 17 Initially, yes. 18 A When did you stop working for outsiders? 19 This would have been approximately 1962. 20 A Did you know the decedent, Mr. Summer Gerard, Senio 21 Q 22 No, I never. A Therefore, we may reasonably assume that you never 23 did any accounting work for the decedent?

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Correct.

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1	Q Now, the record establishes that the Ennis Company
2	was a sub-chapter S corporation, was it not?
3	A Correct.
4	Q Is that correct?
5	A That is correct.
6	Q And you know, of course, that the losses that the
7	Ennis Company ran were deductible, both by the decedent on
8	his income tax return, and Mr. Jerry Gerard, Junior.
9	A They were until all the capitalization was writte
10	off, the paid in capital was written off.
11	- Q You never saw the decedent's income tax returns?
12	A No.
13	Q Did you prepare Mr. Gerard Junior's income tax
14	returns?
15	A No, that was prepared by the firm of Galusha,
16	Higgens and Galusha.
17	Q Now, with respect to the Yellowstone investment,
18	advances to the corporation were made by other individuals
19	other than Mr. Jerry Gerard? I believe you so testified.
20	A By individuals other would you restate that,
21	please?
22	Q Were advances, or contributions to capital made
23	to Yellowstone, by individuals other than Mr. Jerry Gerard?
24	'A Yes, but not cash.

When you testified, Sir, with connection to the

1 down trend in the cattle-market, were you testifying from 2 your recollection of events tha: occurred at the time, or did 3 you have the opportunity to refresh your recollection from 4 certain records prior to testifying? 5 I believe both. 6 You did refresh your recollection? 7 Yes, I did. A 8 From records which are in this courtroom? 9 Yes. A 10 Was Yellowstone Company a sub-chapter S corporation? 11 No, it wasn't. 12 You also testified, Sir, that the other major 13 stockholder in Yellowstone also gave his personal guarantee, 14 isn't that correct? 15 Yes. 16 To the full extent of the \$200,000? 17 Yes. 18 Now, the Ennis Company owned and operated a ranch. 19 That is correct is it not? 20 That is correct. 21 And Mr. Jerry Gerard and his family maintained Q 22 their residence on the ranch? 23 That is correct. 24 Q I ask you to look at Exhibits 101 and 102, please. 25 -MRS. VORSANGER: I'm sorry, Your Honor, (inaudible.)

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rest of the day. What I had in mind is that as a matter of cross examination I don't know that you are entitled to go through the books and records in an effort to ascertain something that is not involved in the financial statements that have been submitted and cross examine the witness as to those. I would be inclined to limit the cross examination of this witness to the financial statements that have been submitted. Now --

MRS. VORSANGER: The capital contributions, Your

THE COURT: That will all show on the records, and if the records do not show them in the form that they have been summarized, then we'll correct the summaries or strike the summaries.

MRS. VORSANGER: Right. The rest of the day would be sufficient to me.

THE COURT: Thank you. The witness will be excused, but will remain available for the -- until the trial session is concluded today.

MR. WHORISKEY: May I just put a few more questions to the witness, Your Honor.

REDIRECT EXAMINATION BY

MR. WHORISKEY:

Q Mr. Ayers, you testified that Marshall Young, one of

1 Are you familiar with the financial solvency of 2 Marshall Young during the period from 1961 through 1965? 3 MRS. VORSANGER: Your Honor, I am going to object 4 5 to that. THE COURT: Sustained. 6 7 BY MR. WHORISKEY: Mr. Ayers, are you familiar with - let me re-phrase 8 that question. Do you know whether Summer Gerard Junior ever 9 had to satisfy the guarantee which he gave to First National 10 Bank on behalf of the Yellowstone Feed and Cattle Company? 11 12 MRS. VORSANGER: Objection, Your Honor. 13 THE COURT: Overruled. 14 BY MR. WHORISKEY: 15 Would you answer the question. 16 Q 17 A Yes. Do you know when? 18 19 In 1967. -Do you know whether Mr. Marshall Young --20 THE COURT: The objection is sustained. 21 MRS. VORSANGER: I move to strike the answer, Your 22 23 Honor. . THE COURT: The answer will be striken. 24 -MR.-WHORISKEY: No further questions of this witness 25

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THE COURT: You may step down, Hr. Ayers. 1 MR. WHORISKEY: I call Mr. Sumner Gerard, Junior. 2 THE CLERK: Do you solemnly swear that the testi-3 mony you are about to give the Court in this case will 4 be the truth, the whole truth, and nothing but the truth 5 so help you God? 6 MR. GERARD: I do. 7 THE CLERK: Would you state your name and home 8 address for the record, please? 9 THE WITNESS: Summer Gerard, Junior. Present 10 address Gammarth, G-a-m-n-a-r-t-h, Tunisia. 11 SUMNER GERARD, JUNIOR, called as a witness, 12 having been duly sworn, took the stand and testified as 13 follows: 14 DIRECT EXAMINATION BY 15 MR. WHORISKEY: 16 What is your occupation, sir? 17 A I am a aid director in Tunisia. 18 What relation were you to the dedecent in this case? Q 19 A I was his son. 20 When were you born? In what year? Q 21 I was born in 1916. A 22 And what year were you married to your wife, Louise? Q 23

Did you have any children through that marriage?

1943.

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1	as to the birthdates of each of your children?
2	A Yes, it is the same as I have here.
3	Q Would you please state the dates in which each
4	of your children were born?
5	A Jenny Gerard, May 31st, 1945, Molly Gerard, June
6	30th, 1947, Helen Gerard, March 24th, '49, Ann Gerard,
7	February 13th, '51, and Summer Gerard the third, March 31st,
8	1953.
9	Q Thank you. Sir, you had two brothers, Charles
10	Henry Coster, and James W. Gerard. Do you know in which year
11	Charles Henry Coster was first married?
12	A It would have been in the '50's sometime.
13	Q Again I show you Exhibit 132 for identification to
14	see if it refreshes your recollection.
15	A 1958.
16	Q Did Charles Henry Coster Gerard, your brother, have
17	any children of that marriage?
18	A Yes, he has four children.
19	Q Do you know the dates in which those four children
20	were born?
21	A Can't say that I do.
22	Q May I show you Exhibit 132 for identification again
23	to refresh your recollection?
24	A You'd like me to give the dates?
25	Yes, please, if you will.

and then I was a partner in an export firm, here in New York. 1 When did you first become interested in Montana? 2 I had been out there as a child with my father and 3 my uncle had a ranch out there which I visited from time to 4 time. 5 When did you first consider moving to Montana with Q 6 your wife and your children? 7 Well, I think I had it in mind during the war, but 8 it didn't become a reality until after the war about '45 or '46, in that area, '47. 10 Q Did you take any steps to determine where you would 11 move to in Montana or any other state in that area? 12 Yes. I studied the ranching business to some extent 13 and took a tour of the West with my wife in 1947. 14 What states did you tour? Q 15 We toured Arizona and New Mexico, Colorado, Wyoming, 16 Montana. 17 Do you know whether your father, the decedent herein 0 18 had any interest in Montana prior to the time you moved out 19 there? 20 io, he had none. 21 As a result of that tour, did you make any selection 22 as to property that you wanted in Montana? 23 Yes, I did. We found a ranch in Ennis, which was 24

an area my father knew, and I made a recommendation to him

1	that he buy it.							
2	Q How large was the ranch?							
3	A The ranch at that time was about 15,000 acres.							
4	Q In what year was the ranch purchased?							
5	A I believe it was 1948.							
6	Who provided the funds to purchase the ranch?							
7	A My father did.							
8	Q In what form was the ranch held as of the date of							
9	- the purchase?							
10	A It was held we bought a corporation called the							
11	Ennis Company, and he owned, as I remember, all the shares							
12	of stock at that time							
13	Q Do you know how much your father paid for all those							
14	shares?							
15	A I don't think so. He paid cash over an existing							
16	mortgage at that time, and I suppose it was in the neighbor-							
17	hood of							
18	MRS. VORSANGER: Your Honor, the witness is just							
19	speculating at this point.							
20	THE WITNESS: It is hard to say. This is very hard							
21	for me to answer. Say in the neighborhood of \$50,00, in							
22	that area, that is for the ranch itself.							
23	BY MR. WHORISKEY:							
24	Q Was the ranch operated in corporate form after							
25	1948?							

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A Yes, it was.

Q Until what date?

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A The exact date I don't remember. I think Mr. Ayers testified that it was in -- somewhere -- again, I cannot say specifically. In the '50's some time.

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Q Can you tell us whether the ranch was ever liquidated? That is, whether the corporation was ever liquidated in the 1950's?

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A Yes. The corporation was liquidated.

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Q Did the -- was the ranch then operated in another business form following that liquidation?

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A Yes.

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Q In what form?

sub-chapter S corporation.

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A It was operated as a partnership.

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Q As a partnership. Until what date, sir?

16 17 A Well, then it would have been until '59 or '60 when it became a corporation again under a slightly different name

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Q Were the assets of the partnership transferred to the new corporation?

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A Yes.

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Q And what was the name of the new corporation?

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A The Ennis Company.

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Q That was, you think, in 1959?

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A Be in that area.

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Q Who received the stock of the Ennis Company; and hereafter I will refer to the new corporation as the Ennis Company.

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A My father and my wife and myself.

Q Do you know approximately how many shares of stock of the Ennis Company that your father held at that time?

A I don't remember the capitalization, but he held and about two-thirds.

Q And who held the other one-third?

A My wife and myself.

Q Did you pay any cash for your one-third interest in the Ennis Company?

A No, not that I remember. This was in return for our efforts up to that time, and minimal salary drawn up to that time.

Q Would you please discuss the type of business that was conducted through the Ennis Ranch?

A The Ennis Ranch was a -- it changed from various times from cow and calf and steer operation. It's a complicated business to explain, but from time to time one changes one's form of operation, but basically it was a cattle raising operation, and the cattle was sold out as calves or yearlings or two-year olds, depending upon how the market indicated they should be run.

the witness, Your Honor.

1	THE WITNESS: I'm sorry.
2	BY MR. WHORISKEY:
3	Q Sir, did your wife. Touise Gerard, have any assets
4	of her own?
5	A Yes, she had a very small trust fund that was set
6	up by her father.
7	Q Do you know approximately how much income was yielded
8	by this fund annually?
5	A I don't think it was over \$2,000.
10	Q Did your wife ever receive any stock or securities
11	from her mother or her father?
12	MRS. VORSANGER: If he knows, Your Honor.
13	BY MR. WHORISKEY:
14	Q May I re-phrase the question. Do you know whether
15	your wife ever received any stock or securities from her
16	mother or father?
17	A Yes, she did.
18	Q Do you know which shares?
19	A I think she had shares of International Business
20	Machines, which her mother owned and made gifts in small
21	amounts from time to time.
22	Q Do you know how many shares she received?
23	A I think she had, all told, 54 shares, but it depends
24	of course, what time, because the of stock dividends and

so on.

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Q	Mr.	Gerard,	would	the	figure	of	30	shares	be	more
accurate?										
	n	- 41. 1								

A Possibly as an initial gift. And then it was my impression that that was added to by dividends and splits and so on and so on. That can be determined.

Q Did she have any other securities in addition to the stock of International Business Machines Company?

- A Not that I know of.
- Q Was that stock ever pledged by your wife?
- A Yes, it was.

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Q Do you know for what purpose it was pledged?

A Well, it was not serving any useful purpose, and so it was pledged on the cattle loan of Metals Bank and Trust Company in Butte, the Ennis Company loans.

- Q That was a loan by the bank to the Ennis Company?
- A Correct.
- Q Did your father, the decedent herein, ever take any interest in the Ennis Ranch?
- A Yes, he was very interested in it. He liked it very much.
 - Q Lid he ever visit the ranch?
 - A Yes. Nearly every summer he would visit.
- Q. Do you recall the dates in which he made visits to the reach?
 - A I'd say nearly every summer up to about '58, '59,

1 somewhere in that area, and then he wanted to come subsequently. 2 Did he ever actually make it after 1958 or 1959? 3 A No, I don't believe so. 4 Q Was your father -- did your father take an interest 5 in your children? 6 Very much, he was very fond of them. 7 Would he correspond with your children? R A Yes, at length. 9 0 Did he take an interest in the education of your 10 children? 11 Yes, very much. 12 Did he ever indicate to which schools he would like 13 to see your children be admitted and attend? 14 Very much so, and these were always -- these plans 15 were always discussed with him. 16 Q What were those -- were those matters that he 17 discussed with you? 18 Yes. 19 And were they matters that he discussed with your 20 wife? 21 Yes. 22 Q And were they matters that he discussed with your 23 children? 24 Λ Yes. 25 0 What schools did he indicate that he wanted your

children to attend?

A Well, I don't think he knew much about girl's schools, but he was particularly hopeful that my son would go to the same school he went to, and I did.

Q Were they private schools, sir?

A Yes.

did you ever serve in the public office?

A Yes.

Q Would you please -- did you ever campaign for the state legislature, specifically?

A Yes.

Q When was the first time that you ran for the state legislature?

A In -- I think '55 was the first session I served in.
I served in various county offices before that.

Q Were you successful in being elected?

A Yes.

Q Were you re-elected?

A Yes.

Q For how long did you serve in the state legislature in Montana?

I served three sessions in the house, and two in the senate.

Q low long-were the sessions?

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1	A The sessions were by law 60 days, but they some
2	times ran a little longer.
3	Q How often were elections held?
4	A They are held every two years for the house and
5	every four years for the senate. They were staggered elections
6	Q So that you ran for the legislature first in 1955,
7	I believe you testified. Did you run again in 1957?
8	A Served in '55, I would have run probably in the
9	fall of '54. Yes, I served in '57.
10	Q And what about 1959 and 1960?
11	A Yes. '59 I served again.
12	Q And you served in the house in the Montana legis-
13	lature?
14	A Yes, I was minority leader in '59.
15	Q During which term?
16	A '59 session.
17	Q I see.
18	A And also minority leader in the senate in the '64
19	session, I guess.
20	Q T see, and you would have had to when did you
21	first run for the state senate in Montana?
22	A It would have been in '61, the fall of '61, served
23	in the 162 session.
24	Q And for how long did you serve in the state senate?
25	A It was one term, it was two sessions.

And how long was that term, sir? 1 A Four years. 2 Q Four years. Were you also active in state politics 3 in general in Montana? 4 Yes, yes. A 5 Did you participate to any extent in any national 6 politics during the period that we have just been talking 7 about? 8 Yes. A 9 What did you do? 10 I served as an delegate or alternate delegate to 11 national conventions, let's see, in '58 I also worked for the 12 National Congressional Committee, Republican National Congress-13 ional Committee as one of their western campaign managers 14 they called it. 15 Did you -- was anybody in your family ever -- did 16 anybody in your family ever serve in public office, sir? 17 Yes, my uncle --18 MRS. VORSANGER: Your Honor, I am going to object 19 to this. I don't know how far we can let it go. 20 THE COURT: Objection sustained. 21

DY MR. WHORISKEY:

Q Did you father take an interest in your political career?

A Very much.

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Q Did you ever campaign for national office from Montana, sir?

A Yes. I ran for the U. S. Senate in 1960.

Q Was that for the primary -- the United States
Senate?

A Yes.

Q Were you successful in that campaign?

A I was not.

Q Did your father ever provide any financial assistance for any of your political campaigns?

A Yes, from time to time he helped. He helped on the senate race, some, not very much as I recall. He did from time to time contribute to candidate that I suggested for Congress, or for Montana offices, and he did support the Republican Party in Montana to some extent.

Q With respect to your Senate primary campaign in 1960, do you recall how much your father contributed to that campaign?

A I don't, but it was not significant in terms of the cost of the campaign. I --

Q what was the over all cost of that campaign, approximately?

A I suppose it was around \$30,000. I just take it out of the air.

MRS.-VORSANGER: I beg your pardon. I didn't hear

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THE WITNESS: I said it was probably around \$70,000 - \$40,000. It is difficult to compute the overall cost of a campaign, because the individual candidate has a number of clubs that operate for him. I think you are probably familiar with that, and they didn't file their statements with the Secretary of State so that it is difficult for me to remember what specific commitments were made by the various committees.

BY MR. WHORISKEY:

that answer.

Did you -- strike that. Did you provide any of your own funds for the Senate campaign in 1960?

Yes. It was necessary because it was a primary effort, and generally at least initially personally supporting.

-Do-you-recall approximately how much you-spent?

I would say that campaign probably cost me around \$20,000 personally. I suspect so.

THE COURT: I think at this point we will recess now the noon break until 2:00 o'clock.

(Recess)

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AFTERNOON SESSION

THE CLERK Be scated please.

THE COURT: I believe Mr. Gerard was on the stand when we recessed. Would you take the stand, Mr. Gerard?

MR. WHORISKEY: Mr. Clerk, F hand you a document and ask you to mark it for identification.

THE CLERK: Potitioner's Exhibit 133 for identification.

BY MR. THORISKEY:

On I'm going to centime with your examination now,

Mr. Gerard, if I can. You had just testified that you spent
personally, approximately \$29,000 on the Senate primary campaign in 1960. What was your -- was your father aware of the
fact that you personally hourowed from the Ennis Company
during the years 1960 to 1965?

A Oh yes.

O And did your father contribute to the -- did your father contribute any cash to the Ennis Company after 1960?

A No, he did not.

O Did your father pledge any securities to banks which loaned funds to the Ennis Company in 1960?

A Yes, he did.

O Do you recall whether your father pledged any specific stocks in 1961 to Metals Bank and Trust Company in Butto,

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A It would have been about that time he pledged some International Pusiness Machines and Standard Oil of New Jersey.

Montana on behalf of the Ennis Company?

O Do you recall how many shares of IPM were pleaded in 1961 to Metals Eank by your father?

A I don't. At that time -- I don't remember how many shares.

Q Do you recall how many shares of Standard Oil of New Jersey were pledged at that time?

A I believe it was about seven hundred shares.

Q In 1963, do you know whether or not your father pledged additional shares of stock to Metals Bank and Trust Company in Butte on -- to secure loans made by that bank to the Ennis Company?

A It might have been about that time he increased the Standard Oil. I think that's a possibility.

O Did he pledge any additional shares of International Business Machines?

- A los, he would have at that time.
- O Do you know how many shares he pledged?
- A No, but at the -- ro, I don't.
- O I gather from your testimony them, Mr. Gerard that your father, while not willing to put additional cash into the Ennis Company, was willing to pledge his personal

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securities to banks to secure loans which were made to those banks to the Ennis Company.

Yes, I think he found that the easiest way to do it. I pointed out to him many times that the ranch was running at a cash loss, at somewhere around -- oh,\$25,000 a year or something like that. And in any given year if we didn't come up with additional securities for the loan, the bank would be unhappy, and at some point, that security would have to be provided.

- Were any of your personal securities pledged to the bank to secure loans to the Ennis Company?
 - Yes, from time to time. And my wife's.
- Were would you say that most of your personal securities were so pledged?
 - Not to that bank necessarily, no.
- How closely did your father follow the firarcial 0 affairs of the Ennis Company during the years 1960 to '65?

MRS. VORSANGER: Objection, Your Honor.

THE COURT: Overruled.

I think he followed it quite closely. He had an accountant in his office who kept him informed I'm sure. We sent back regular statements and occasionally the bank --the Metals Pank -- would correspond with him directly.

And when he came out in the summer he'd always talk with the president of the bank - would come down and

THE COURT: I believe you testified though, didn't you, Ur. Gerard, that your father didn't come out in

the summer 1960, when counsel asked you.

been prior to '60, but he certainly continued his ob-

O Did you use advances from the Ennis Company for your personal living expenses and other personal ventures not connected with the Ennis Company?

A Yes.

O Did you ever discuss the future of the Ennis
Ranch operation with your father?

A On many occasions.

O Did you ever make any recommendations to your father with respect to the Frnis Ranch?

A Yes. I think I came to the conclusion on that ranch not too long after we'd boucht it, that it was a very beautiful ranch and a very lovely place to live, but it wasn't a money maker. It wasn't a well balanced ranch, shor on hay, short on winter capacity. And there wasn't nuch we could do about it at the time. And I did recommend on a number of occasions that we sell it and go elsewhere.

- On those occasions, what was your father's response

THE COURT: Overriled.

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A No, he liked the Ennis Ranch very much and I think he was -- he never liked to make a deal and -- in a business sense very much, I think he felt my place was on the ranch.

And we did at one time buy another ranch. I forget the exact date of that -- the Dillon ranch -- he never liked that deal, and we sold it. We liked Ennis.

On the basis of hearsay, Your Honor. He cannot --

O Did your father ever anticipate -- did you ever indicate to your father that the Ennis Ranch might be run on a profitable basis? After 1960.

A No. I don't think it was possible on the basis of its capitalization. The figures will certainly show quite clearly that a very substantial portion of the loss in all years was owing to the high rate of interest that -- the high amount of interest that we had to pay -- and that unless it was further capitalized the probability of its making money was slight.

O Did you ask your father for additional capitalizationfor this ranch --

A Yes.

Q -- in the years preceeding 1960. In the years after 1960?

A On many years. Yes. Many years.

O On how many occasions, sir?

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A I think it was a very frequent affair. Because it was very close to me and I felt somewhat trapped in the situation because it was his ranch largely. We did earn an interest in it, but in view of my enlarged activities, I couldn't see it as a solid enough, substant enough base for my operations.

Q Now, did you ever -- did you ever indicate that you wished to return to New York City to your father, and leave the ranch?

A No.

O But you did indicate that you wished to liquidate the ranch operation to your father, on many occasions?

A Yes, yes. But I would have stayed out West.

O Did you ever consult with any attorneys in this regard?

A Yes, I think so. Or a number of occasions.

O Did you recall consulting with an attorney from Curtis, Mallet-Prevost, Colt and Mosle?

A Yes. They've been long-time attorneys for the whole family.

O And do you recall the attorney with whom you first consulted?

A I suppose -- I don't know just what dates you're talking about -- but

0 I'm talking about the early years when you made

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1 your first approach to your father about selling the land. 2 Yes. I would have consulted with -- Judge Ponsal 3 was representing us at that time. 4 Did your father see any advantages in holding onto 5 the ranch? 6 MRS. VORSANGER: Your Honor, I going to have to 7 object to --8 THE COURT: Objection sustained. Counsel for the 9 petitioner -- we're going so far afield here that I 10 think the respondent has been very patient and the 11 Court has been very patient. You're going to have to 12 come to the points here in issue now. 13 All of this background is wholly irrelevant in the 14 mind of the Court. 15 During the years 1960 to 1963, Mr. Gerard, were you 16 able to live on your earnings? 17 A 110. 18 Did you ever ask your father for additional funds? 0 19 or for stocks. 20 Λ Yes. 21 Did you do this on rany occasions? 0 22 Λ Yes. 23 Did you do this with increasing frequency since 0 24

Certainly as my position got more difficult.

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1960?

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Q Now difficult did your position become?

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race which was expensive. And the children were getting

Well, it became very tight indeed after the Senate

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older and growing up. And the ranch position was not improving and the Yellowstone Feed and Cattle enterprise,

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obviously not going very well.

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There was an increased need for cash.

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Q Did you feel -- did the increased need for addi-

are all leading and I'm going to object to them.

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tional cash or funds become particularly evident in 1963?

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MRS. VORSANGER: Your Honor, these such questions

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THE COURT: Sustained.

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Q I believe, Mr. Gerard, that you testified earlier with respect to the dates of birth of your children. I

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might just note for the record that as of 1963, you had a

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daughter, Jenny (phonetic) who was 18, a daughter, Molly,

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who was 16, and a daughter, Melen, who was 14, and a daughter

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Anne, who was 12.

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Were the educational facilities in the Ennis area adequate for your children, in your opinion?

A No, we didn't think so. The grade school was all right. But for the high school, we felt they should go away.

Q Did you anticipate as of the end of 1963 that you would be having substantial educational expenses for the

schooling of your children?

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- A Certainly did.
- Q Did you discuss your each short position with your father in 1963?
 - A Certainly.
- Q How would this be done? Would you come to New York
 City or would you call him by telephone?
- A I came quite frequently to New York during that period and -- in connection with the business here and so forth, and then I had also interests of my own in the East. And, so I came back quite frequently. I also talked on the phone regularly.
- Q Did you -- did you discuss various means by which some assistance might be given to the Ennis Company and to yourself, with your father?
- A Yes. I'd try everytime that I saw him to explain that something really had to be done about it.
- Q Did you discuss the possibility of receiving stock by which you -- stock which you could pledge to a bank to secure a ditional loans?

MRS. VORSANGER: Objection, Your Honor.
THE COURT: Sustained.

Q Did you ever approach a bank in 1963 with the possibility in mind that you might be receiving stock from your father? I was advised at one point that there was a

S. Gerard - Direct

MRS. VORSANCER: Objection, Your Honor.

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THE COURT: Sustained.

Q Did you -- with what bank did you consult, sir?

A Chemical Pank.

Q Did you advise Chemical Bank that you might have

possibility that some stock might be given --

some stock to pledge for a loan with Chemical Bank?

A Yes.

Q Was Chemical Bank advised as to the type of stock which you might have available?

A Yes, I think there were several possibilities discussed.

Q What were the possibilities that you mentioned to Chemical Bank?

A Well, I think we specifically discussed the possibility of being able to borrow against Aeon Realty Corporation.

Q I see. And those conversations took place during

Λ '63.

Now, do you know the date on which the Aeon shares eventually transferred to you and your two brothers?

A No.

MR. WHORISKEY: We can stipulate, Your Honor,

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with government counsel's consent, that the shares in question were transferred to the decedent's three sons on January 2, 1965 -- January 4, 1965, excuse me.

MRS. VORSANGER: January 2, 1964.

MR. WHORISKEY: January 2, 1964.

Q Mr. Gerard, when you received the Aeon shares, did you then have further conversation with Chemical Bank?

A Yes.

Q Did you indicate to Chemical Bank that those shares might be pledged to them shortly?

A Yes.

MRS. VORSANGER: Your Honor, I'm going to object to this line of questioning.

THE COURT: Your objection is sustained. It has nothing to do with the intent of the decedent in making the transfer. Now, if counsel will please --

MR. WHORISKEY: Well, Your Honor, I think if we can tie in --

THE COURT: Well, I've been waiting all morning for the 'ie-in and - we're talking about a state of mind of the deceased. Not a state of mind of this witness and anything that doesn't relate to the state of mind of the decedent is absolutely irrelevant and immaterial.

MR. WHORISKEY: But on the other hand, Your Honor,
if we can show that decedent transferred the Acon shares

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so that respondent could pledge them for a loan

THE COURT: Well, what discussions the witness may have had with the bank are wholly irrelevant. He could have anticipated that someday his father was going to pass away. After all, he's 90 years old. So, he's going to have some stocks to pledge.

I mean, if you just want to look at it crassly, this proves absolutely nothing, counsel. The Court would be very interested in hearing what the state of mind of the decedent was as of this time. Not the state of mind of the recipient.

BY MR. WHORISKEY:

- Q Were you aware, Mr. Gerard, of your father's intention to give you some assistance with your personal affairs in 1963 and early 1964?
 - A In '63, yes. And '64 definitely.
- O And did he indicate did he indicate that he would eventually give you some financial assistance?
 - A My understanding was that he was going to, yes.
 - ? T see.
- A And it very probably would take the form of Aeon stock, and that's why I talked to the bank.
 - Q I see.

THE COURT: Now, counsel, again, if the witness will be asked to testify as to what he said to his

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some value in our very difficult effort to find -- ascertain the intent of the decedent. But all of these
events are somewhat neutral unless we have a more definitive definition as to what took place.

Q Did your father -- in your conversations with your father, did he indicate that --

THE COURT: First, let's place when the conversation took place. Now counsel for respondent has been very, very tolerant to you. I'm not about to listen to any more conversations or generalities unless we identify an approximate time and place and what the conversation was.

Not what you might characterize it, but what the actual conversation was.

- Q Did you have conversations in the fall of 1963 with your father?
 - A No question.
 - Q Did you have many conversations with your father?
 - A I had quite a few, yes.
- Q Can you recall the specific dates on which you had those conversations?
 - A No, I can't, no.
- 9 But you do recall those conversations took place in the fall of 1963?
 - A Certainly.

THE COURT: Now where did those conversations take place? Did you come to New York in the fall of 1963 or -- your father didn't go to Montana? You must have come to New York.

THE WITNESS: No. I came through in '63 -- several times and it was my habit --

THE COURT: I see. How long were you here at the time you came through?

THE WITNESS: I would -- come through and spend a week or so.

THE COURT: By coming through, what do you mean?
Were you en route someplace else?

THE WITNESS: Well, I'd come to New York and stay
in a hotel, visit the children and go see my father, have
conversations with the office and --

THE COURT: And you were here in the fall of '63?
THE WITNESS: Yes.

THE COURT: Very good. You may proceed.

Now, did you -- did your father ever -- In your conversation with your father, did he ever specifically say I will give you Aeon stock?

A No.

MRS. VORSANGER: I'm going to object to that, Your Honor.

THE COURT: Sustained.

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Did your father ever indicate that he would give you some form of financial assistance in the fall of 1963 to provide the Ennis -- to provide you with additional educational funds for your children?

MRS. VORSANGER: Objection.

THE COURT: Sustained.

Q Did your father ever indicate to you, Mr. Gerard, that he intended to provide you with some assistance for educational expenses for your children?

MRS. VORSANGER: Objection, Your Honor.

TUE COURT: Sustained.

MR. WHORISKEY: May I ask the basis of the objection?

THE COURT: Would you state the basis.

MRS. VORSANGER: It's leading, Your Honor, it calls for a conclusion on the part of this witness.

THE COURT: Sustained.

Mr. Gerard, did your father ever make any statements about his intent to assist you with your educational expenses?

MRS. VORSANGER: I'd like to object to that, too, Your Honor.

THE COURT: Overruled.

MRS. VORSANCER: May we have specifics as to time and place and to whom the statements were made?

THE COURT: Well, wait until he finds out whether such a statement was made, counsel. You're a little

premature. You may proceed, Mr. Gerard.

A Well, I think these are very, very hard questions to answer, except that I can say that it was a subject of continuous discussion. He knew what my position was. He knew that I needed help on the educational problem which

was becoming acute. And that the conversation would revolve around -- A, whether he would. And B, what form it would take.

Q And did these conversations occur in the fall of 1963?

A I'm sure they did.

Q And did they -- were they a result of your frequent meetings with your father at that time?

A Yes.

Q Now, --

THE COURT: For the record, counsel, the term frequent is a term that's subject to a wide latitude of interpretation. It might mean one thing to you and another thing to the Court and another thing to the respondent. If you will attempt to clarify what is mean't by the word, frequent, and ask how many times the witness came to New York, how many times he saw his father when he was here in the fall of '63. And what the conversations were.

HRS. VORSANGER: Your Honor, is there any way I can

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hear the last question and answer? I don't know how this recording --

THE COURT: Well, the counsel asked whether they had frequent conversations in regard to the witness' problem with financing the education of his children, and the witness answered yes.

MRS. VORSANGER - Thank you.

THE COURT: Now, as the Court mentioned, the term, frequent - I -- that's as difficult to ascertain as the basic issue itself, I think.

MR. WHORISKEY: Perhaps I can clarify that point, Your Honor.

O Mr. Gerard, how often in the fall of 1963 did you converse with your father about these matters?

A Well, we were very close. And I don't think a week went by, I would be talking to him on the phone or being here and seeing him. How frequent the trips to New York at that time were, I cannot specifically remember. Put --

THE COURT: Do you remember any specific conversations, Mr. Gerard? Either on the phone or here in person. Any specific time when you met with your father and discussed these things.

THE WITHESS: I can remember quite a number, Your Honor.

THE COURT: Well, just start with one. The place

and when it was discussed approximately, and what the nature of -- what you said and what he said,

THE WITNESS. Well, as I say, I find that very difficult to do and to do it fairly and accurately at this distance in time. I find it enormously difficult. You remember only the sort of general pattern and kind of conversation we'd have, the place -- where it would take place, usually.

And to specifically try and recall a particular conversation, I would find very difficult.

petitioner that this witness' testimony in the case indicates what, I think, is hardly subject to dispute, the witness is operating a ranch in Montana. A cow herd isn't productive of a great amount of cash income at any time.

Particularly in these days when, as I recall it, the price of calves weren't very favorable.

The reason I say that is that we were beseiged with cattlemen for tariff legislation at about this time. The witness, undoubtedly, discussed with his father the need for obtaining funds, both to continue living and also, to facilitate with the education of his children. Now, that's all a normal function, and one I don't think the respondent questions. Do you, Mrs. Vorsanger?

MES. VORSANGER: No, Your Honor.

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THE COURT: But the problem, again, that confronts the Court is, is none of this, as I see it, shows any great insight on the state of mind of the decedent. He could have given the witness \$50,000 a year or he could have given him a million dollars. And either one would have been equally satisfactory solution toward the problem.

And as to why the decedent chose to give the million rather than the \$50,000 a year is really the question the Court has to figure.

- Did your father, in the conversations that you had with your father in the fall of 1963, did you indicate to him what the scope of your financial commitments would be in the year ahead?
 - Only in general terms.
- Did you indicate to him that you would be running again for the legislature -- for the Senate, rather, in Montana?
 - A In '60 when?
 - Q In the fall of 1963.
- '63, yes. He always urged me to -- Well, now, the fall of '63, that would be the election year coming up.

THE COURT: Are you speaking of the U. S. Senate or are you speaking of the Senate in the State of Montana? THE WITNESS: No -- that -- that was the general

election year coming up and we talked about what I would do and one thing and another.

THE COURT: You wouldn't have the temerity to run against Senator Mansfield, would you?

THE WITNESS: I didn't --

THE COURT: I thought you had better judgment than that --

THE WITNESS: You're quite right, Your Honor. That was the previous year. No, because of my legislative position, I think we were talking about a governorship race, rather than a Senate race. These things sometimes work out this way. I did talk with him on that subject, of going into national politics. And he encouraged me, moderately, I'd say.

BY MR. WHORISKEY.

Q Did you have any conversations -- you testify that you did have conversations with bank officers, Chemical Bank officers, in 1963.

A Yes.

Ω Do you know whether your father had conversations with any other people in 1963 relating to the transfer of Aeon stock?

MMS. VORSAMGER: Objection, Your Monor.

THE COURT: Sustained.

IR. MORISKEY: Your Honor, that's an objective

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THE CLERK: Po seated please.

THE COURT: Hr. Gerard, will take the stand.

MR. UNORISKEY: Your Bonor, before the government counsel proceeds with cross examination, may we just make explicit on the record what has been stipulated. And that is that the present witness during the years 1962, 1963, 1964 was short of cash so that his expenditures exceeded his sources of cash, absent bank borrowings and he was living on borrowed funds during that period of time. And also the witness had pledged approximately 90 percent of his marketable securities during that period of time to secure loans.

If -- and that was the basis on which I abandoned my testimony -- examination of the witness.

THE COURT: I'll agree to all of that. It is agreed that the witness --

MRS. VORSANGER: Yes, Your Honor, I will agree -THE COURT: Spent more than his income as we all
do, but as to how much more, I think probably the best
stat ment would be -- get his bank statement. They
show deposits and withdrawals. But I think we all agree
that the witness was in need of additional funds.

I don't think anybody questions that.

MRS. VORSAMGERS: Your Honor

MR. WHORISKFY: Your Konor, if I may just develop-

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this point further because we were attempting to show exactly how much the witness was short of funds.

THE COURT: Let me point out something to counsel. Now, you say he had all of his -- 90 percent of his assets pledged to loans.

MR. WHORISKEY: Of his marketable securities.

THE COURT: All right. Now, you can go in and borrow \$10,000, and with all due deference to the Chemical Trust here, if they can persuade you to put up a hundred, they'll persuade you to put up a hundred. They may just take twenty and that's all. So the fact that you've got everything pledged doesn't mean that you've exhausted your borrowing capacity on the basis of what you have pledged or --

I mean, outside of being able to present an actual personal balance sheet or financial statement of the witness, I don't think that we're talking about generalitie which I think the Court is perfectly convinced of. And I'm sure that counsel for the respondent doesn't dispute and that is, that your witness was in need of funds.

Now, ---

MRS. VORSAMGER: Your Monor, if I may make a suggest I have here a financial statement of Summer Gerard as of April 1, 1965 which I'm perfectly willing to stipulate to.

THE COURT: Well, that, I think, would give us much better information than the witness' testimony.

MR. WHORISKEY: Your Honor, the financial statement in question was submitted by the witness to Chemical Bank in 1965. We're talking about the period at the end of 1963. We merely wish to show, without regard to the witness' purported net worth, that he was short of cash at the end of 1963 and needed additional sources of cash at that time.

THE COURT: He may have.

MR. WHORISKEY: Well, if that is conceded, then I assume that we need to ask the witness no further questions.

THE COURT: Well, I think the counsel for the respondent concedes that the witness needed additional cash We're not conceding that he couldn't have obtained such cash as left to his own resources which I -- What was his bank account as of the end of 19 -- How much cash did he have in the bank at --

We have the -- his income tax returns in evidence and there's been testimony as to his expenditures. We have all of his loans stipulated to, Your Monor. I don't know how much further we need to go.

MR. WHORISKEY: Your Honor, if I may just develop-

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THE COURT: All right.

in cooks: All-right.

MRS. VORSANGER: -- but I promise it won't be more than a minute.

THE COURT: We'll have one minute's recess then.

(Short recess)

BY MRS. VORSANGER:

Q Mr. Gerard, during the years roughly 1958 through '66 in addition to the income that you received from the legislature and the operation of the ranch and your other business ventures, and capital gains, you also received distributions from a trust which was set up by your father in 1935, isn't that a fact?

A Yes.

Q And isn't it also a fact that you received distribution from the estate of Mary D. Gerard (phonetic).

A Yes.

Q Isn't it also a fact that during these period you owned some non-taxables?

A It might have been held in those trusts. I didn't personally, that I know of.

Q Personally, you did not. Now, as I recall your testimony this morning, sir, you stated that the Ennis Ranch was basically a losing proposition from the beginning.

A Yes.

Q Is that correct.

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A Yes.

Q And that from the beginning you found it necessary to ask your father to advance funds?

A It was under-capitalized, yes.

Q Then you found it necessary to ask your father to advance funds?

A I suggested that he do so, in the interests of the business.

Q And on some occasions he did?

A Yes.

Q And on some occasions he also advanced collateral to the bank, isn't that a fact?

A Yes.

of cattle you had at the Ennis Ranch, say in 1963?

THE WITNESS: '63, it'd be somewhere around 800 probably in about that period.

THE COURT: And how many cows and how many bulls?

THE WITNESS: We changed our operation and I can't remember exactly. We ran yearling steers for a while and then I changed to a two year old operation, where we reduced our cows and then we went back into the cow and calf business, but normally I suppose it would have been somewhere around four or five hundred cows in there, in that area.

1	HRS. VORSANCER: Your Honor, the parties have
2	agreed to stipulate this next Exhibit as Exhibit A
3	THE CLERK A-I.
4	MR. WHORISKEY: Petitioner will stipulate Exhibit
5	A-I for identification, Your Honor.
6	THE COURT: Be received.
7	BY MRS. VORSANGER
8	Q Now, about the Ennis Company, sir. You indicated
9	that in 1948 it had been organized as a corporation.
10	A Yes.
11	Q In 1954 it became a partnership?
12	A Yes.
13	Q And thereafter, in '58, it again became a corpor-
14	ation electing to be taxed under sub-chapter s?
15	A Yes.
16	Q Were these changes done pursuant to tax advice?
17	A Yes.
18	Q Would you tell us, sir, starting with let's say,
19	January 1st, 1961, on how many occasions did you have your
20	father's a computation made of your father's estate and
21	the possible estate tax consequently?
22	MR. WHORISKEY: Objection.
23	THE COURT: I'm sorry, would you repeat the question
25	course1?
20	MRS. VORSANGER: Starting with January 1st, 1961,

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- 11	or his secretary would have to read to him from time to time.
2	A This would have been what year?
3	Q '63, '64.
4	A Well, I certainly think not in '63 or '64. Possibly
5	later, possibly '64, but I don't think he had to be read to.
6	To got tired reading.
7	Q Were there occasions, Mr. Gerard, let's say either the
8	summer I'm sorry, the Christmas of 1962, the Christmas of 1961
9	I'm going to m-phrase that. Isn't it a fact that your father
10	for Christmas gifts would give you and your brothers a \$25.00
11	check?
12	A It sounds in character. Yes, (inaudible).
13	Q And isn't it also a fair statement to make that your
14	father kept a firm control over his assets and his corporations:
15	A I'd say that was a very fair statement.
16	MRS. VORSANGER: Your Honor, if I may just review se
17	other matters. I don't believe I have any further questi
18	Your Honor.
19	THE COURT: Counsel for the petitioner?
20	MR. WHORISKEY: Yes, sir.
21	REDIRECT EXAMINATION BY
22	MR. WHORISKEY:
23	Q Mr. Gerard, I show you Exhibit A-D in evidence. I
24	refer your attention to a statement in Exhibit A-D, to the
25	effect, and this is a letter to the Chemical Bank, the

1 THE COURT: No, the Court 2 MRS. VORSANGER: That is my recollection Your 3 Honor, that if --4 THE COURT: -- the Court decided that was rather 5 remote in time. Now, if you wish to pursue the matter -6 MR. WHORISKEY: I will withdraw the question. 7 BY MR. WHORISKEY: 8 Sir, you testified that your father made rather 9 modest cash gifts to yourself and to your brothers at 10 Christmastime. Did he make any gifts to his grandchildren? 11 Yes. A 12 Those gifts in substantial amounts? 13 They'd get -- yes, I'd say substantial. A 14 By substantial how much do you mean? Q 15 One or two thousand dollars. 16 And were those gifts made on a regular basis to-17 his grandchildren? 18 -- regular --. A 19 During what period of time? Q 20 Say in the time that we are speaking about. 21 1960 through 1965? Did he make a gift of one to Q 22 two thousand dollars to each of his grandchildren every year 23 during those periods? 24 I think he covered them all pretty well. 25 THE COURT: Regardless of age?

Sumner Gerard, et cetera, continuing.

MR. CAMPBELL: Petitioner's call Mr. Hugh V. Galusha, Junior.

THE CLERK: Do you solemnly swear that the testimony you are about to give the Court in this case will
be the truth, the whole truth and nothing but the truth
so help you God?

MR. GALUSHA: I do.

THE CLERK: Would you state your name and address for the record, please?

THE WITNESS: My name is Hugh V. Galusha, Junior. G-a-1-u-s-h-a. My address is Post Office Box 320, Route 7, Wayzata -- W-a-y-z-a-t-a, Minnesota.

MR. CAMPBELL: Your Honor, can we ask Mr. Galusha to bear with us a minute. We overlooked to put in some stipulations.

MR. LEITNER: Request the Court's indulgence, stipulate the following educational expenses for Mr. Summer Gerard, Junior for the years, for his children for the years 1962 through 1964. 1962 in the Annie Wright (Phonetic) Seminary the sum of \$10,279.75. The total for the year 1962, \$10,279.75. 1963 at the Annie

Wright Seminary, Tacoma, Washington, the sum of \$11,070.60, and at Vassar College the sum of \$1,700.

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The total for the year 1963, \$12,770.60. The year 1964 at the Annie Wright Seminary, \$9,369.25, at Vassar College, \$2,866.50, and at the Foxcroft School, \$1,930.62. The total for the year 1964, \$14,166.37.

number 133, being a Security Bank and Trust Company checking account ledger statement with the year end balance -- should we stipulate that first?

MRS. VORSANGER: (Inaudible).

MR. LEITNER: -- with the year end balance indicated for the year twelve -- for the year ending 1963, being \$719.68, that sum being illegible on the ledger sheet. Exhibit 133 for identification is offered into evidence.

MRS. VORSANGER: No objection, Your Honor.

THE COURT: Be received.

THE CLERK: Exhibit 133.

MR. LEITNER: What is petitioner's last exhibit number?

THE CLERK: 139.

MR. LEITNER: I ask to mark for identification petitioner's Exhibit Number 140 for identification.

THE CLERK: Petitioner's Exhibit 140 for identification.

MR. LEITNER: Let this be received in evidence, the Chemical Bank ledger.

1 THE COURT: Petitioner's Exhibit 140 will be 2 received without objection. 3 THE CLERK: Exhibit 140 and is that 141 for 4 identification? 5 MR. LEITNER: 141 for identification. I request 6 that 141 be received. 7 MRS. VORSANGER: No objection. 8 THE COURT: Petitioner's Exhibit 141 will be 9 received without objection. 10 THE CLERK: 141. Mext is 142 for identification. 11 MR. LEITNER: Exhibit Number 142 for identification, 12 the brokerage record of F. S. Mosley Company, years '64, 13 1964. 14 MRS. VORSANGER: No objection. 15 THE COURT: Be received without objection. 16 THE CLERK: 142. 17 MR. LEITNER: For identification Petitioner's 18 Exhibit Number 143, the brokerage records of D. Witter 19 & Co. for the account of Sumner Gerard, Junior, beginning 20 December 29, 1961 through December 31, 1964. 21 MRS. VORSANGER: No objection. 22 THE COURT: Be received without objection. 23 THE CLERK: Exhibit 143. 24 MR. LEITNER: Thank you, Your Honor. 25 HUGH V. GALUSHA, JUNIOR, called as a

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1	witness, having been duly sworn, took the stand and
2	testified as follows:
3	DIRECT EXAMINATION BY
4	MR. CAMPBELL:
5	Q Mr. Galusha, where do you work?
6	A Federal Reserve Bank in Minneapolis.
7	Q What is your position?
8	A I'm president.
9	Q How long have you held that position?
10	A Since May 1, 1965.
11	Q Were you with the Federal Reserve before that date?
12	A Only as the director of that bank.
13	Q What was your occupation before that date?
14	A I was a certified public accountant and a lawyer in
15	Helena, Montana.
16	Q You were a CPA in Hontana?
17	A Yes.
18	Q Were you admitted to the bar in Montana?
19	A Yes.
20	Q Can you quickly give us your professional career
21	and your place of this career from 1952 to 1965.
22	MRS. VORSANGER: Your Honor, I don't think this is
3	necessary.
A .	THE COURT: Well, I think if the witness will make
5	it give-us a brief summary of his career.

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Galusha - Direct

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	" 1687 1 dlu;
	bid you know who owned that corporation in 1962?
	A Yes.
	Q Who was that?
5	A Sumner Gorard, Senior.
6	Q Did you know Mr. Sumner Gerard, Senior in Montana?
7	A I never met him in Montana.
8	Q Where did you meet him?
9	
10	
- 11	A Yes.
12	Q Did you see him at his home in New York City?
13	A Yes, I usually stayed with him on my trips to
14	New York.
15	Q Where was that residence?
16	A West 73rd Street, and I don't think I can give you
17	the house number.
18	Q It was on 73rd Steat, though, as you recall?
19	A I believe so.
20	
21	1 Jan Latte to hit. Gerard?
22	A Yes, I did.
23	Q When did you start giving that advice as you recall?
	λ In 1952.
24	Q Can you tell us the nature of the advice?
25	A Yes. I was approached first by Sumner Gerard,

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the question, Your Honor.

THE COUPT: The point is well taken.

BY MR. CAMPBELL:

Were you acquainted with the financial condition of Mr. and Mrs. Jerry Corard, and of the Ennis Company?

Intimately so. Λ

Was your firm the public accounting firm that did that type of work for them and for that company?

Yes.

Can you tell us the years in which the firm did that work?

They did it from 1952 on -- up through -- certainly the tipe that I left I understand that they still do work for Jerry Gerard. I no longer have any interest, Your Honor, in that firm.

Can you recall any year in which the Ennis Company Q ever made a profit?

A No.

THE COURT: I would ask the witness to clarify that statement. Whether you are talking about a profit for tax purposes, or whether you are talking about a profit if you inventoried your cattle at fair market value rather than at the zero cost that you had for a calf.

THE WITNESS: No, the current short-term indebtedness

Your Honor, for the cattle -- always against the cattle -- was usually in excess of the fair market value of the animals. Whatever appreciation had taken place in the investment was in the real estate.

This is very difficult to measure until you sell the ranch, but as far as the cattle is concerned --

THE COURT: In your year to year accounting, why as I got it from Mr. Gerard, over a period of time at least when it was a cow herd, and so you'd have a certain number of calves at the end of the year. Those calves would not show up on any profit and loss statement that would be reflected in your tax returns, isn't that right?

THE WITNESS: That's correct. They would show up on a balance sheet though that would be used for credit purposes. They also had a steer operation, bought steers to fill out their grazing capacity.

BY MR. CAMPBELL:

- Q From 1960 on, did you ever have any conversations with Mr. Jerry Gerard, or with Mrs. Jerry Gerard, regarding the cash position of the Ennis Company.
 - A les, many.
- Q Can you give us the substance of those conversations and the dates as you recall them?
- A Our visits were quite frequent. We were -- I was not only in the role of an advisor, but we were close

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by that we didn't have a conversation about the about Jerry's plans, so I was quite well aware of ial condition of the corporation. oid you have any similar conversations with Mr. ed and Mrs. Jerry Gerard or both, with regard to ly's financial condition?

well. I would assume that there was hardly a month

that was the substance of the conversations with the financial condition of the ranch? ferry's income from the ranch was always modest.

salary was somewhere around \$400.00 a month.

s were a multiple of that. He financed his personal s, which were quite varied and quite high, education lement of it, his political campaigning was a big it, the kinds of ventures that he would attempt to time certainly took a lot of money. He financed

RS, VORSANGER: Objection, Your Honor. I don't e this answer in responsive to the question. He ked for the substance of conversations, not a of --

variety of ways, partly by loans from Ennis to

HE COURT: I think the witness is leading up to

1 THE WITH 2 but the conve 3 going to come 4 was always a 5 for future in 6 Jerry and was 7 father. 8 BY MR. CAMPBELL: 9 Was it o 10 Very muc 11 period. 12 0

Can you with Mr. Gerard, S MRS. VOR

been no --

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BY MR. CAMPBELL: Did you e

THE COUR

Senior regarding th At every

subject.

Can you t Senior from the year

It would

there were years wh

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ESS: I'm sorry I am approaching it slowly, rsations were always, where was the money from. The potential of the Ennis Company question for not only current income but come. This was a matter of concern to certainly a matter of great concern to his

f concern to Mrs. Gerard, Junior? h. She kept the books through much of this

tell us the substance of your conversations enior with regard to this situation? SANGER: Objection, Your Honor, there has

: Sustained!

Galusha - Direct

ever have any conversations with Mr. Gerard financial position of the Ennis Company? meeting we had this was the principal

cell us how often you met with Mr. Gerard, rs 1960 to 1965?

certainly have been once a year, and it -en it was more often. We became close

Ennis Company?

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A Many.

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Did you have any of those conversations in 1963?

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A Yes.

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Q Can you give us the substance of those conversations?

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A Yes. Ennis Company was heavily encumbered, as I mentioned earlier, the livestock were mortgaged -- I believe

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at that time the Metals Bank -- in excess of the --

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MRS. VORSANGER: Your Honor, could you admonish

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the witness to make his answers responsive to the question?

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THE COURT: Yes, I think the witness should attempt

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to confine his answers to the question, and I think I

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would also request counsel for the petitioner to attempt

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perhaps to fix a more definite time for these conver-

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sations. The respondent isn't objecting, but by the

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same token I think the thrust of the testimony would be

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much more effective if the Court were aware of the time

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MR. CAMPBELL: Yes, Your Honor.

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BY MR. CAMPBELL:

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Q Mr. Galusha, can you give us any dates in 1963

22 23 when you visited Mr. Gerard, Senior?

and circumstances.

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A I recall a visit in the summer. I can't place the exact month. I recall a visit in December of 1963, because

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he and I went out to hear a combined voice choir that was

Q During those visits, did Mr. Gerard discuss with you additional financial assistance for Ennis Company?

A Yes, he did.

singing at one of the local cathedrals.

Q Can you tell us the nature of those -- correction.

Can you tell us the substance of those discussions?

A The question was first how could the money be placed in the Ennis Company. What sources were there within the Ennis Company that were free and available for further credit extension.

MRS. VORSANGER: Your Honor, may we have clarification of who said what to whom?

THE WITNESS: Yes. His question of me, usually related -- started out with this; how much additional capacity is there in the Ennis Company for further credit advance in terms of mortgage on land or advances against livestock.

MRS. VORSANGER: I would like to have a clarification of this, Your Honor, I -- there is objection here, Your Honor, on the basis of hearsay with respect to the statements made by the decedent, but as long as the --

THE COURT: Well, that objection is overruled, Mrs. Vorsanger.

MRS. VORSANGER: Well then, may I -- I assume

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therefore that that's overruled, Your Honor, that, on the basis that this testimony is coming in, for the facts that the conversation was held, rather than for the truth of the matter stated therein.

THE COURT: Well, I think we are attempting to ascertain the state of mind of the decedent, and what the decedent may have said to this witness as of that time is certainly pertinent to determining his state of mind, whether that statement may have been 100 percent accurate or not is immaterial. That's why I am not sure that the efforts today that pinpointing Mr.Gerard Junior's financial position of great materiality. The real important question is what did the decedent think it was, not what it was in fact.

MRS. VORSANGER: Yes, Your Honor, but the respondent does object on the basis of hearsay, unless the testimony is so limited.

THE COURT: Overruled.

BY MR. CAMPBELL:

Q Mr. Galusha, you have testified the way the question arose from Mr. Gerard to you as to how to get additional financial to the Ennis Company. What did you say to him in response to his questions or remarks?

A I told him that the capacity of the Ennis Company to support additional bonafied loans, based on its own assets

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 was -- had been extinguished -- fully utilized, and only by continued reliance on the outside credit capacity furnished by independent collateral, his or Jerry's, or anyone else's could further credit extension be possible.

THE COUPT: In order to get this into proper context, would the witness if he recalls, advise us as to the amount of loan that we are talking about here. In other words, are we talking in terms of ten or fifteen thousand dollars, or are we talking in terms of borrowing a half a million?

THE WITNESS: The operating budget of the Ennis
Company, let us assume at roughly \$40.00 per head. The
carrying capacity, I think, was about 1500 head. This
required an operating budget of \$60,000 to just keep the
ranch open. In addition to that were the obligations,
the financing obligations for the Jerry Gerard family,
which were always regarded as part of the Ennis operation by Mr. Gerard, Senior, and these costs were --

MRS. VORSANGER: I move to strike the last part

LHE COURT: Let the witness proceed.

of that answer, Your Honor.

THE WITNESS: These costs were very high, Your Honor. The --

THE COURT: I know, but Mr. Galusha, you still haven't come to the question. Obviously, he's not going

to be borrowing a \$100,000 a year, because we went through year after year and it didn't approach that amount and the ranch was just operating, and you can always cut back on your herd. There are all kinds of — you are telling me what the maximum borrowing would be under the most adverse circumstances if you didn't sell any cows. Now, is that the basis on which you talked to Mr. Gerard?

THE WITNESS: No, sir. I am talking about the current operating budget.

THE COURT: I mean, how much were you talking about borrowing? Was it \$10,000, \$20,000, \$30,000 or \$100,000.

THE WITNESS: It took \$60,000 to operate it --

THE COURT: I am not interested in what it took to operate, I am interested in what amount, if any, you discussed with Mr. Gerard, Senior.

THE WITNESS: We talked about the annual requirement of \$60,000 --

THE COURT: So you talked about being able to borrow \$60,000 a year.

THE WITNESS: Plus roughly another \$30,000 to keep the Gerard, Junior family afloat.

THE COURT: Well, based on past experience, had it

THE WITNESS: Yes, it had. The debts of the ranch

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showed that that had been the experience.

MR. CAMPBELL: Your Honor, it has been pointed out to me that the fact that you just elucidated may be stipulated -- has been stipulated, rather. Is that correct?

THE COURT: If you'me speaking of the financial statements, they don't show that, frankly.

MR. CAMPBELL: Well, we will leave the stipulation to speak for itself, it was just to point out --

THE COURT: And as I come back to the basic problem I have with those statements is that the inventory of cows has been taken out of it. I know of no way of arriving at the true income of a ranching operation, and I'm not talking about the taxable income, but if you are going to put these in issue, and I don't think they are material anyway, frankly, but I know of no way of arriving at the true income without taking the number of cows and their value into consideration each year, and the tax return does not do that, does it, Mr. Calusha?

THE WITNESS: No, they were on a cash basis.

THE COURT: That's right. So the fact that he shows a loss of \$50,000 for tax return means nothing in terms of true economic gain or loss, does it?

THE WITNESS: The balance sheet is the only

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important statement.

THE COURT: Well, as I see, the balance sheet has only a nominal amount of the cow inventory.

THE WITNESS: But the debts --

THE COURT: At least the ones that were in evidence.

THE WITNESS: Yes. The debts as revealed on that balance sheet indicate the cost of operating that branch.

THE COURT: The cost, Mr. Galusha, you are an accountant and I am a part-time accountant, the cost of operating the ranch would be indicated more accurately, would it not, by the tax return adjusted for the inventory.

THE WITNESS: Yes.

THE COURT: Not the balance sheet, because the debts could have been incurred to buy land, or buy a house, or to buy anything.

THE WITNESS: That is correct.

THE COUPT: Yes. Thank you.

BY MR. CAMPBELL:

Q Did Mr. Gerard, Senior, discuss with you the financial condition of the family during these visits in 1963?

A Yes, he did

Q What did he say to you?

MRS. VORSANGER: Your Honor, I am going to object

again on the basis of hearsay.

1	THE COURT: Overruled.
2	THE WITNESS: He was deeply concerned.
3	THE COURT: Now, what did he say to you, Mr.
4	Galusha?
5	THE WITNESS: He said
6	THE COURT: And don't characterize his state of
7	mind. That's what the respondent is correct in objecting
8	to. I'll strike the answer now. Do you recall what
9	Mr. Gerard, Senior said to you and what you said to him?
10	THE WITNESS: "What's going to happen to Jerry?"
11	THE COURT: And you said?
12	THE WITNESS: "I'm worried about my grand-kids."
13	THE COURT: And what did you say to him?
14	THE WITNESS: I said, "I share your apprehension."
15	BY MR. CAMPBELL:
16	Q Did you say anything else to him?
17	A I said, "They are going down the drain."
18	Q Did you suggest to him any way of preventing that
19	dire result?
20	A That they needed a transfusion of new capital.
21	——————————————————————————————————————
22	fusion of new capital to the family?
23	MRS. VORSANGER: May We have time and place
24	specified, Your Honor?
25	BY HR. CAMPETILA

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2	λ Yes, there was.
3	Q Can you tell us when, if you remember?
4	A It would have occurred in the summer of 1963, and
5	would have been continued at the meeting in December of '66.
6	Q Can you tell us the substance of that discussion.
7	In particular, what Mr. Gerard said to you and what you said
8	to him?
9	MRS. VORSANGER: When?
10	BY MR. CAMPBELL:
11	Q At any time in 1963.
12	THE COUPT: Either the summer or December of '63,
13	that's sufficiently precise. I gather this was a
14	continuing problem and they were continuing conversation
15	THE WITNESS: It was a continuing problem. He said
16	to me that he wanted to help Jerry out. He was con
17	he did not want Jerry to have control, the right to
18	dispose of property.
19	IRS. VORSANGER: Your Honor, respondent has a
20	continuing objection to the
21	THE COURT: Overruled.
22	DY MR. CAMPBELL:
23	2 Please continue your answer.
24	A Mr. Gerard explained to me his pattern of financing
25	He explained to me the system of mortgaging property believe

he said to me, "I have no property that isn't encumbered. I believe in borrowing against property. I particularly want to give Jerry something against which he can borrow, but which he cannot dispose of, that will give him the collateral for a new kind of loan.

I told him this to a country boy was awfully hard to understand, that the creation of debt to me was intolerable, and that the Ennis Company and the Gerard, Junior family was in debt up to their ears with little likelihood of working out and he said that I have faith that Jerry will be able to do it. He has the ranch under control, about which I expressed my misgivings. He has other kinds of investments going, and some of these are going to pay off.

Q Did Mr. Gerard, Senior mention to you any property he proposed to use for the transfusion you mentioned?

A Yes. He was going to transfer shares of stock in one of their family corporations called Aeon, or -- pronouncing it correctly.

Q Were they a -- the company you previously mentioned in your testimony as Aeon Realty Company, a New York corporation?

A Yes

Q Did the decedent -- excuse re, Your Honor.

THE COURT: I was going to ask the witness whether the decedent proposed then that he transfer some stock-

in Acon to Hr. Gerard. 1 THE WITNESS: Yes. 2 THE COURT: And what -- did you have any reaction 3 to that? 4 THE WITNESS: I asked what Aeon was --5 THE COURT: Yes. 6 THE WITNESS: -- and he tried to explain to me, 7 Your Honor, but it was a complex system of fee owner-8 ship, and land that was tucked under other people's 9 buildings, and it was really quite mysterious to a 10 country boy. 11 THE COURT: Well, now that you have gotten to the 12 big city and become a banker, what would you think of 13 Aeon, a minority interest in Aeon as collateral? 14 THE WITNESS: I would still --15 THE COURT: You'd take a dim view I see. 16 THE WITHESS: -- question its usefulness except to 17 a New York banker. 18 THE COURT: All right. Thank you. 19 BY MR. CAMPBELL: 20 Q Fr. Galusha, you just mentioned you questioned the 21 use of Acon except to a New York banker. What did you mean 22 by that? 23 MRS. VORSANGER: I'm sorry, I didn't hear the 24 question.

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THE COURT: No, but I asked him now whether he

still

THE MITHESS: It has been a long tradition, I found

out. Mr. Gerard unfolded the history of his pattern of

out. Mr. Gerard unfolded the history of his pattern of financing. He was able to secure loans on a variety of instruments and pieces of security that were foreign to me, but apparently were acceptable to the banks with which he did business.

BY MR. CAMPBULL:

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Q Mr. Galusha, you mentioned that you had been a director of several corporations in Montana. Were you a director of any banks during the years prior to 1965?

A Yes. I was a director of a commercial bank until I went on the board of the Faderal Peserve, at which time I had to resign from the convercial bank.

- O What was the name of that bank.
- A The Union Bank and Trust Company in Helena, Montana.
- Q In these conversations did Mr. Gerard, Senior eyer mention to you any payment of gift taxes?

MRS. VORSAUGER: Objection, Your Honor.

or in December, right?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Overruled.

MRS. VORSANCER: It is a leading question, Your Honor.

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1 WR. CAMPBELL: I'll be glad to rephrase the question. 2 BY MR. CAMPEELL: 3 Reph' using that question, and restating it, during 1953 in connection with the transfusion you mention proposed 5 by Mr. Gerard, or proposed by someone, was there any discussion 6 of liabilities that would incur to Mr. Gerard with relation 7 to the transfusion? 8 A Yes. 9 What was that Asscussion? 0 10 The question of the amount of the gift tax. A 11 What did Mr. Gerard say to you and what did you say Q 12 to him with regard to the amount of the gift tax? 13 MRS. VORSANGER: Note respondent's continuing 14 objection to what Mr. Gerard said. 15 THE COURT: Gverruled. 16 THE WITNESS: I had been supplied the computation 17 of the gift tax. It was a very substantial sum. I had 18 reviewed the computation. I told him that the amount 19 was accurate. He was quite disturbed about the -- raising 20 that much money. He particularly objected to the parting 21 of -- I think it was a sum, it was a very large sum of 22 money was involved, and how that money would be raised 23 was a problem. 24 BY NIR CAPPETIL

-Q Did he-ever-discuss with you any method of raising

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that money?

he appeared to you.

Q Now, you testified that you visited Mr. Gerard at his home and knew him well -- personally, I believe. Can you describe as best you can, Mr. Gerard's physical condition as

A Yes. He was obviously suffering from a respiratory disease. He had difficulty catching -- or keeping his breath. He spoke haltingly on occasion.

Q Did he ever say anything to you about mortality or death?

A Yes, he did.

MRS. VORSANGER: May I have the witness specify time and place, please?

THE COURT: This is in the summer or fall of 1963?

THE WITNESS: Your Honor, I couldn't identify the occasion. He was mindful of mortality as everybody is, and he would be -- express it in these ways. "I'm concerned about what's going to happen to Jerry." "I'm concerned --

MRS. VORSAMGER: I move to strike that, Your Honor. It's not responsive to the question.

THE COURT: Overruled. Overruled. Proceed.

THE WITNESS: I'm concerned about the relationship with the other two boys", and in that sense he would,

always wanted to know about the operation of properties after his death.

THE COURT: Well, in that connection, Mr. Galusha, when you had this discussion as to the amount of the gift tax, was there any discussion at all that the amount of the estate tax would even be greater than the amount that concerned Mr. Gerard as to the gift tax?

THE WITNESS: He was concerned, obviously, Your Honor, about the amount of the estate tax that would be involved, but the only concern he had about which he was vocal to me was where was the money coming from to pay the gift tax. Who would pay the estate tax never concerned him very much.

BY MR. CAMPBELL:

Q With regard to the transfusion, so called, and in these conversations in '63, did Mr. Gerard, Senior ever talk to you about favoring Mr. Jerry Gerard?

MRS. VORSANGER: That's a leading question, Your Honor, objection.

THE COURT: Sustained.

BY MR. CAMPBELL:

- Q. Were there any discussions between Mr. Gerard and you with regard to transfusion to other members of his family?
 - A Yes, there were.
 - Q What were those conversations?

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He expressed to me a number of times over the years his enormous pride in Jerry's political career. He was fascinated with ranching. He also was mindful of Jerry's improvidence, and the need --

MRS. VORSANGER: Your Bonor --

THE COURT: Sustained. Sustained.

MRS. VORSANGER: -- how is -- move to strike the answer please.

THE COURT: The answer will be stricken.

THE WITNESS: May I try it again?

BY MR. CAMPBELL:

Mr. Galusha, can you try to answer my question again.

A Yes.

Which was, do you remember any conversations with regard to so-called transfusions to other members of the family than Summer Gerard, Junior?

A Yes.

What were those conversations?

When money was advanced to the Ennis Company, prior to 1963 by Mr. Gerard, he always said, "What am I going to do for the other two boys?" When the transfer of capital to Jerry of stock in Aeon Corporation was being discussed he said, "I have to make a similar gift to the other two boys", and then he discussed with me his appraisal of their

personal situations and their ability to earn a living. 1 Q Can you give us the substance of his discussion with regard to the abilities and substance of the other 3 4 members of the family? 5 MRS. VORSANGER: Objection, Your Honor. 6 THE COURT: Sustained. 7 MR. CAMPBELL: No further questions. 8 CROSS EXAMINATION BY 9 MRS. VORSANGER: 10 Q Mr. Galusha, you have testified that you are 11 familiar with the financial situation of the Ennis Company, 12 is that correct? 13 A Yes. 14 And, of course, you are familiar with the fact that the Ennis Company had been borrowing funds from 15 Montana banks going back to the early 50's, isn't that 16 17 correct? 18 Λ Yes. 19 So that therefore the Ennis Company was in need of 20 infusions, as you phrased it, beginning in the early 50's, 21 isn't that a fact? 22 A Yes.

Q And that from time to time Mr. Gerard, Senior

made some of these infusions directly to the Ennis Company,

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isn't that a fact?

A Yes.

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Q Mr. Gerard, Senior owned two-thirds of that ranch, isn't that a fact?

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A Yes.

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Q And relying on your accounting knowledge, rather than your banking knowledge, you also know that Mr. Gerard, Senior was able to take substantial deductions by reason of the tax losses of the Ennis Company, isn't that a fact?

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A Yes.

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Ω Are you familiar with the amount of those losses, Mr. Galusha?

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A I'm sorry, I'd have to refresh my memory, but it is my recollection that they amounted to several hundred thousand dollars of operating losses.

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Q That he was able to deduct against his ordinary

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A Yes.

income?

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Q How, pursuing this matter of Mr. Jerry Gerard's need for capital, and relying on your familiarity of the affairs of the Ennis Ranch, you indicated that Mr. Jerry Gerard, Junior, drew a salary of approximately \$400.00 a month, isn't that a fact?

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A . Yes.

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Q Now, Mr. Jerry Gerard lived on the ranch, did he not?

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	A	Yes.
1	Q	And his family. Did he pay rent to the ranch?
2	A	No.
3	Q	Some of the ranch employees performed some services
4	for Mr. G	Serard and his family, isn't that a fact?
5	Α	As manager of the ranch, yes, that's true.
6	Q	And he didn't pay the ranch for the use of those
7	services?	Now, the ranch also owned a plane, isn't that a
8	fact?	
9	Α	Yes.
10	Q	And Mr. Gerard, Junior also used that on occasion
11	for person	nal business, did he not?
12	λ	Yes.
13	Q	And he didn't pay the ranch for use of that plane,
14	did he?	, and of and plane,
15	Α	I don!t recall that.
16	Q	Whenever Mr. Gerard, Junior traveled on ranch
17	business,	sir, the ranch paid for those expenses, isn't that
18	a fact?	the state of the s
19	Α	Yes.
20	Q	Yow, Mr. Galusha, you were not Mr. Summer Gerard,
21	Senior's a	accountant were you?
22	λ	I was not.
23	Q	You were not his financial advisor were you?
24		not all illiancial advisor were you?

A With regard to the Montana properties I regarded

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myself at that, yes.

	19/9
1	Q Were you paid for your services by Mr. Jerry Gerar
2	Senior I'm sorry, by Mr. Sumner Gerard, Senior?
3	A I was paid by the Ennis Company.
4	Q But with respect to your advice to Mr. Summer
5	Gerard, Senior you were a volunteer? You were not hired nor
6	paid, were you, sir?
7	A I'm quite certain I was never paid other than by
8	Ennis Company.
9	Q Now, let's take it back to 1960, sir. Did you, in
10	1960, meet with the decedent?
11	A I have would be reasonably certain that I did,
12	but I couldn't identify the time.
13	O It would have been at least once, sir?

- Λ Yes.

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- And at that time did you advise him that the Ennis Company needed an increase in the capital?
- I can say only this. At every visit I had with him the problem was the same, and that was getting additional capital to the Ennis Company.
 - And these visits would have been in 1960?
 - les. Λ
 - 0 In 1961?
 - V. Yes.
 - In 1962? 0
 - Λ Yes.

on-To-Go Office Service

1	Q In 1964?
2	A Yes.
3	Q '65?
4	A Yes. No, I'm sorry, not in '65.
5	Q But in '64?'
6	A Yes.
7	Now, then with respect to the year 1963, sir, you
8	met or with respect to any other meeting with Mr. Gerard,
9	Senior, did you make any memoranda or note down the business
10	transactions with Mr. Summer Gerard, Senior?
11	A Yes, it was my custom to keep a day book and to
12	write memoranda following visits with major clients.
13	Q Where is that day book now?
14	A I'm not sure where it is, really, since I left the firm
15	Q Is it in this courtroom today?
16	A No, it is not.
17	Q You knew you would testify to these matters when
18	you came here today?
19	A Yes, I did.
20	Q With respect to the year 1963, sir, and did you
21	check to find that Mr. Gerard, Senior advised you that he
22	was going to make a transfer of stock to his sons, is
23	that a fact?
24	Λ Yes.
25	Q Was this in December of 1963, sir?

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AFTERNOON SESSION

BY MRS. VORSANGER:

Q Mr. Galusha, in the conversations you had with Mr. Sumner Gerard, Senior, in 1963, was there anyone else present?

A I would say no.

Q During your conversations with the decedent, relating to the bad cash situation of the Ennis Company, did you ever discuss with him at the time additional collateral so that additional loans could be given?

A Additional collateral to the Ennis Company?

Q Or to the bank?

A Yes.

Q You did discuss that?

A Yes.

Q Did you suggest he do that?

A I suggested that it might be necessary. I don't recall urging him to do it specifically.

Q Isn't it a fact, Mr. Galusha, that the decedent tooksome pleasure in the negative benefits that he derived from the loss of the Ennis Ranch?

MR. CAMPBELL: Objection.

THE COURT: Sustained.

MRS. VORSANCER: May I inquire as to the basis of the objection, Your-Honor?

1	THE COURT: Would counsel state the basis of his
2	objection?
3	MR. CAMPBELL: The question seeks information as
4	to the thoughts of the deceased, not as to his statement
5	THE COURT: On that basis, the objection will be
6	sustained.
7	BY MRS. VORSANGER:
8	Q Did he appear to you to take pleasure
9	MR. CAMPBELL: Objection.
10	THE COURT: Sustained.
11	BY MRS. VORSANGER:
12	Q Did he express the fact that he was deriving a
13	benefit, a tax benefit, from the loss situation of the Ennis
14	Ranch?
15	A Yes, he did.
16	Q Now, when you had these discussions with the
17	decedent did you after you had these discussions with the
18	decedent, did you discuss them with Jerry?
19	A Usually.
20	Q Were you party, sir, to any discussion relating
21	to the benefits to be derived by the decedent by maintaining
22	a large indebtedness outstanding from the ranch?
23	MR. CAMPBELL: Objection.
24	THE COURT: Overruled.
25	THE WITNESS: I'm sorry would you give me that

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has testified that he had those discussions, now --

MRS. VORSANGER: I understand that, Your Honor, but my question now relates to the indebtedness outstanding — the indebtedness of the Ennis Company, and I'd like to ask this witness if he was a party to any conversation or discussion concerning the benefits inured to be derived by the decedent by maintaining the large indebtedness of the Ennis Company outstanding.

MR. CAMPBELL: Your Honor, that assumes a benefit in the question.

THE COURT: Do you object on that basis?

MR. CAMPBELL: I don't object.

THE COURT: The witness may answer.

THE WITNESS: It had implications for sub-chapter S, which I think that -- in the latter stage the Ennis Company was, and I would assume I would have discussed it in that connection. I don't have a precise recollection.

BY MRS. VORSANGER:

- Q Would you have discussed this in connection with the benefits for estate tax purposes?
 - A I have no recollection of that.
- Q Now, when the discussion of the Aeon, or the gifts to the sons came up, did you discuss that in terms of over all estate planning, sir?

1	A Certainly the implications I look for, estate tax,
2	gift tax and income tax would have been considered. Yes, and
3	I am certain that I did.
4	Q And you discussed that with the decedent?
5	A Yes.
6	Q The decedent you found did you find that the
7	decedent was advised, was aware of tax consequences?
8	A I can't really believe that he was.
9	Q He was not aware. Did you advise him?
10	A Not specifically other than in a general summary
11	of what the effect of the gifts would be, in terms of his
12	taxes.
13	Q Specifically, sir, you were not his tax advisor,
14	the decedent's tax advisor?
15	A Only as it affected his son, Jerry Gerard and the
16	Ennis Company.
17	Q With respect to Mrs. Gerard, isn't it a fact that
18	she had an independent income of her own?
19	A She had a very modest income.
20	Q But she did have an income?
21	A Yes, but a very small one.
22	Q Did you ever meet Jerry Gerard's mother?
23	A Yes, I did. Mrs. Arthur Train, T-r-a-i-n.
24	Q To your knowledge did she advance any funds?
25	A liet to my knowledge.

1	question was what were the records used by the witness
2	in preparation of his testimony, and they were provided.
3	We move to strike the regional counsel's statement. The
4	witness was in Court.
5	THE COURT: I don't see that either statement
6	serves any useful purpose, but I'll let them stand in
7	the record.
8	THE CLERK: Would you state your name and address
9	for the record, please, sir?
10	THE WITNESS: Donald C. Platten, 9 Pasture Lane,
11	Darien, Connecticut.
12	DONALD C. PLATTEN, called as a witness, having
13	been duly sworm, took the stand and testified as
14	follows:
15	DIRECT EXAMINATION BY
16	MR. CAMPBELL:
17	Q Mr. Platten, where do you work?
18	A Chemical Bank.
19	Q What is your position there?
20	A First Vice President.
21	Ω How long have you been with Chemical Bank?
22	A Since July of 1949.
23	Q Can-you tell us your positions and place at work
24	with the bank in summary from 1951 to 1964?
25	A 1951 I was an assistant secretary of the bank and

1	Q Did you have any discussions with Mr. Jerry Gerard
2	regarding his financial condition?
3	A Yes.
4	Q Did Chemical have a banking relationship with Mr.
5	Jerry Gerard?
6	A We had a personal checking account.
7	Q Did you have any other banking relationships?
8	THE COURT: At what time, counsel?
9	MR. CAMPBELL: I beg your pardon?
11	THE COURT: At what time are you asking the question
12	Are you asking if he ever had one?
13	MR. CAMPBELL: Yes, yes. Your Honor, I correct
14	my statement. I am referring in this series of questions
15	to the period 1959 to 1963 because of the previous
16	objections to relevancy for the earlier periods, so I
17	refer only to 1959 and 1963.
18	THE WITNESS: We had some loans with Mr. Gerard,
19	Junior.
20	BY MR. CAMPBELL:
21	Q Do you remember what those loans were secured by?
22	A Well, there were two separate loans, really. One
23	was secured by marketable securities and one secured by stock
24	of this Aeon Realty Corporation.
25	THE COUNT: Now, I'd like to point out to counsel
	at this point that Mr. Gerard, Junior did not have any

corrections, so with that understanding do you have any objections to this being received?

MRS. VORSANGER: No, Your Honor.

THE COURT: It will be received.

it-to-the attention of the Court we'll make the proper

MR. CAMPBELL: Your Honor, may we have the same procedure and the same reservation as to Exhibit 145 for identification?

THE COURT: It will be received subject to the same reservation.

MR. CAMPBELL: Your Honor, the Exhibit 144 is entitled Summer Gerard, Junior Time Loan Record, and Exhibit 145 is -- bears the same title. They are different sheets, offered in evidence subject to the approval of the Court.

THE COURT: Can the Court see those? I'd like to ask the witness a few questions about this time loan record here secured by seventeen shares of Acon Realty Corporation. I believe you describe that as a non-marketable security, is that correct?

THE WITNESS: It would not be a marketable security in the ordinary sense, no.

THE COURT: That is right. And I notice that you loaned the sum of \$25,000, \$15,000 which was subsequently increased to \$25,000 at some point increased to \$40,000,

at which time I see there is some additional collateral 1 2 apparently that was received. 3 MR. CAMPBELL: Your Honor, may be identify the Exhibit. We may not have a complete file here. 4 5 THE COURT: That is Exhibit 143 is it? 6 THE CLERK: 145. THE COURT: It is 145. 8 THE CLERK: Excuse me. 9 THE COURT: Was it your function to approve these 10 loans? 11 THE WITNESS: Generally speaking, yes, when I was there. . I wasn't, obviously it shows that this particular 12 13 . loan came on in August of 1964, so I was not there at the branch at that time. It was somebody else took it 14 15 over --16 THE COURT: But you were there at the time that the stock of Acon Realty was received? 17 18 THE WITNESS: I don't know that. I don't think so. I think I had left. 19 20 THE COURT: I mean if you look at the date there. MR. CAMPBELL: Your Honor, this came in, the stock 21 of Acon came in August 27, '64. 22 THE COURT: You were not there at that time? 23 24 THE WITNESS: No, no.

THE COURT: I don't know that the witness can testify

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1 minority interests in a realty company even though the 2 book value of that stock might be a million. I don't 3 think that would be your normal practice, would it? THE WITNESS: No, I don't think from the stand point 4 5 of -- this is a 6 THE COURT: In other words, as collateral Aeon 7 Realty had a very limited value isn't that correct? 8 THE WITNESS: It had a definite value in our opinion, because we knew what was the under --9 10 THE COURT: Because you knew Mr. Sumner Gerard, 11 Senior, and so forth. 12 THE WITNESS: We knew -- and Junior and the under-13 lying value. THE COURT: But I mean the asset itself, the asset 14 15 itself, is not the type of collateral that somebody could come off the street and borrow \$50 - \$100,000 16 with, is it? 17 THE WITNESS: No, no, but knowing the properties --18 THE COURT: That's right, thank you. By the same 19 token you would probably lend that amount to Mr. Gerard, 20

THE WITNESS: Well, we might -- if he had collateral I think we'd take it.

THE COURT: I see.

Senior without any collateral?

RESUMING DIRECT EXAMINATION BY

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Platten - Direct

MR. CAMPBELL:

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Q Mr. Platten, you testified that you had knowledge of the underlying assets. Did you testify that they were mid-Manhattan real estate and other real estate.

A Yes, I did..

Q Was the character of that asset a consideration in deciding to loan, based on the collateral of the Aeon shares?

MRS. VORSANGER: Objection, Your Honor. The witness was not there in '64.

THE COURT: Sustained.

BY MR. CAMPBELL:

Q Mr. Platten, did you, -- were you ever asked if the Chemical would make a loan secured by Meon shares to Mr. Gerard, Junior?

MRS. VORSANGER: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. CAMPBELL:

Q Do you remember when that was?

A It was sometime after I got back, after I returned to 20 Pine Street, from abroad.

- Q Could you fix that as to the month and the year?
- A The fall of '63.
- Q Did you then indicate that Chemical could take a loan against such securities?

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I did.

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Do you remember who was making the request for such a loan?

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I think it was you.

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Was I asking to borrow in my own behalf, or in behalf of someone else?

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No, no, we had had the -- we had had a conversation in which you mentioned the fact that Mr. Gerard, Junior was in need of some funds for educational purposes, and this is something that I had known was coming down the pike, I guess from the father and also from Jerry before I had left 51st

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Street, so this was nothing that --

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THE COURT: Now, the only element I think, if counsel will permit me to interrupt here, is that when we say make a loan without defining the magnitude of the loan, I think it becomes quite meaningless. If we are still talking about making a \$15 or \$25,000 loan against stock having an underlying value of a million dollars, that being a minority interest in a realty company, then I don't regard that as very significant.

THE WITNESS: Well, I think when you say a minority interest, Your Honor, that you have to put it in the frage of reference that this corporation was, in fact, controlled by the senior member of a family.

THE COURT: That is correct, and if you had made a

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half a million dollar loan and the loan is defaulted, there is no way that you could do anything other than try and sell the stock to somebody else, isn't that right?

THE WITNESS: Or get somebody else to repay the loan.

THE COURT: I see, and take over the stock?

THE WITNESS: Right.

THE COURT: Who would again be a minority partner with Mr. Gerard, Senior.

THE WITNESS: Uh-huh.

THE COURT: That's hard to do, isn't it?

THE WITNESS: It depends upon the properties. It depends upon the properties. I would say that that was a judgment that we made, and --

THE COURT: Well, what I am trying to get to, Mr. Platten, again is that you made --

THE WITNESS: Yeah.

THE COURT: -- the judgement, as I recall it, to the tune of \$15 or \$25,000. Which I can readily understand. If your testimony is intended to indicate that you feel you would have made the same judgment to the tune of \$200,000 I would find it a little more difficult, and if you got up to \$500,000, I would say --

THE WITNESS: You'd find it unbelievable.

THE COURT: -- you were not like any other bankers

I've known, but I am always looking for new ones.

THE WITNESS: I think in this case the loan got up higher than that \$15 or \$25,000.

THE COURT: Well, at that time, as I read that sheet, some additional marketable collateral came onto the picture, which would lead me to assume that at some point you required either additional collateral or --

THE WITNESS: No, I don't --

THE COURT: -- you had reached the point at which you were unwilling to loan against this stock, but all these events occurred after the circumstance that we are dealing with here, and I think that one of the problems is whether any of this is relevant, it presents some considerable difficulty.

THE WITNESS: I think there may be some element of confusion between these records here, this additional collateral that you see here as apparently being taken and then released, I think perhaps may refer to this other loan.

THE COURT: Well, then these sheets may not be stapled together in the right --

THE WITNESS: That could be. You do have the confusion of two loans to the same borrower, you see.

THE COURT: I think we will have to receive them

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security with regard to each, and the amounts of the loans?

MRS. VORSANGER: Objection, Your Honor. Mr. Platter testified he wasn't there for the second loan.

THE COURT: I think we will have to stand on what the record shows on these loan records, and I would suggest though, that because of this confusion why you'll have to make certain that these Exhibits are corrected if such corrections is deemed necessary, because they are rather confusing at this time.

BY MR. CAMPBELL:

Q Mr. Platten, with regard to the amount of the loan to Mr. Gerard, Junior, do you remember any discussion with Mr. Gerard, Junior as to any schedule of loans to be made to him during 1963 and thereafter?

A I do.

Q Could you tell us what that schedule was?

A Well, there was to be a requirement on his part for monies to educate his children and it was arranged, but not in a formal sense, but in an agreed upon sense that each year we'd lend him \$20 to \$25,000 for a period of time, secured by Aeon stock.

Q Po you know how many children Mr. Gerard, Junior has

A Four or five, I can't remember exactly.

MRS. VORSANGER: Your Honor, the record -- fine.

BY MR. CAMPBELL:

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of counsel's. Now, I think that if counsel wished to get into his discussions with this witness, I am prepared to rule on that subpoena. Now, that is why I --

MR. CAMPBELL: I understand, Your Honor, we could perhaps get to that subpoena later, but the witness has testified that he talked to me about the possibility of an additional loan to Mr. Gerard, Senior in the latter part of '63.

BY MR. CAMPBELL:

Q I ask you, Mr. Platten, if you can report the substance of that conversation?

A Well, you told me that he would have -- he might have a -- Mr. Campbell told me that he might have, Mr. Gerard might have a need for some funds approximating a million dollars at some point in the near future and would the bank be willing to lend him those monies.

- Q Was there any discussion as to the purpose of the loan?
 - A For the purpose of paying a gift tax.
 - Q Was that loan placed on Mr. Gerard, Senior?
 - A Eventually, yes.
 - Q Do you remember when it was placed?
- A I think it was in either '64 or '65, actually, on the books of the bank, but I can --

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Was it approximately the amount that you mentioned, of a million dollars?

Yes, it was.

Do you remember the collateral given for that borrowing?

A As I remember, a substantial amount of IBM stock.

Do you remember the approximate largest amount loaned to Sumner Gerard, Junior after 1963 in all his accounts with the Chemical?

MRS. VORSANGER: Your Honor, I'd like to have the time specified as an outside limit.

MR. CAMPBELL: I limit the time 1963 to 1968.

MRS. VORSANGER: Objection as to '68, Your Honor.

MR. CAMPBELL: All right, I withdraw it and limit it 1963 to 1966.

THE WITNESS: I would rather depend upon the records of the bank for that answer.

THE COURT: May I ask the witness if the time that that you committed yourself to make this loan for the purpose of paying the gift tax. Was there any discussion of putting up one of the stock of the realty company as collateral?

THE WITNESS: No.

THE COURT: Reject that, it wasn't --

THE WITHESS: NO.

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THE COUNT: You may. We'll take a brief recess.

(Short Recess)

CROSS EXAMINATION BY

MRS. VORSANGER:

I direct your attention to this number on top of these cards, 01131.

A Uh-huh.

Q Can you explain what that means? It appears on all three cards.

A Oh, it is tied into the name of the borrower. In other words, that's his --

Q The code?

A Well, the code as far as the loan department is concerned, and that is recorded, I think, on the vault control cards, too, isn't it? They have the same number there, you see? This is -- we take the securities we have to put them in a vault, and this is the control on this and this card.

Q Is that then tied into the individual or tied into the loan?

A / Well, it's tied into both.

Q In other words, if you had more than one loan would you still have one number?

A One-number, yes, right.

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is picked

1	O Indicates transfer to new loan card, is that
2	correct?
3	A 'That's what it says.
4	Q And then which would be the new loan card?
5	A It would appear from the dates, see. This is picked
6	up in December of '65 from August of '65, this was the con-
7	tinuation.
8	Q Exhibit 144 indicates a balance of \$20,000, and
9	Exhibit 145 which you Exhibit 146 which you indicate is
0	a continuation, picked up at \$53,000.
1	A Uh-huh. Now this is the balance here, right. Now,
2	let's take a look at this one. As far as numbers are con-
3	cerned no, I can't tell your
4	Q I just want to ask you one more question. I don't
5	mean to press you, but just for information purposes, and for
6	my being able to interpret these, can you tell me what
7	securities back each loan at any given time?
8	A I'm sure the loan clerks could at any given time,
19	but as far as I'm concerned, as I said, this where is the
20	loan that was secured by the Aeon stock shows right here. It
21	shows when the stock was delivered in '64, right? O Uh-huh.
23	Q Uh-huh. A And that was the backing for this particular loan.
	A Mid that was the sacring for this particular roun.

There is another banking --

Well, this is the one that I said I think there has

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been a mix-up as far as the collateral is concerned, that she referred to, Your Honor, and I think that this collateral is backed up by --

THE COURT: Belongs on a --

THE WITNESS: It backs up the other loan, you see.

THE COURT: -- on another loan.

BY MRS. VORSANCER:

Q But you can't tell this for sure, sir? From these figures?

A No, I can't.

MRS. VORSANGER: No further questions, Mr. Platten.
May we go off the record, Your Honor?

THE COURT! You may.

MR. CAMPBELL: I have one question on redirect. In order to have the question first and Mr. Platten can be dismissed.

REDIRECT EXAMINATION BY

MR. CAMPBELL:

loan secured by Aeon stock, would Chemical have been able to satisfy the loan by a sale of the collateral?

MRS. VORSANGER: Objection, Your Honor, on several grounds. I'll state them all.

THE COURT: Let's hear them.

MRS. VORSANCER: That goes beyond the scope of

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1 THE COURT: Let the witness answer if he knows. 2 I think this is a very critical point in the whole --THE WITHESS: Are you saying what value did we 3 4 place on the 5 THE COURT: Yes, did you value that stock for 6 purposes of collateral --7 THE WITNESS: Yes, yes. 8 THE COURT: -- and for purposes of determining how 9 far you would go in lending Mr. Gerard, Junior money 10 as against that collateral? 11 THE WITNESS: We did. THE COURT: And what value did you place on it? 12 13 THE WITNESS: We, I think, placed a value some : 14 where in the area of half a million dollars as a minimum 15 THE COURT: And how far did you decide you were 16 willing to extend him credit against that? 17 THE WITNESS: We didn't have to make that decision 18 in the terms that you were phrasing it, Your Honor, 19 because the purpose of the loan was for educational 20 reasons. THE COURT: So that 21 22

THE WITNESS: There is a limit that would naturally
THE COURT: In effect, we are talking about a very,
very small loan in relation to the evaluation placed on
the asset?

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THE WITNESS: No, I think the loan I've forgotten the ages and prep schools, et cetera, of the children, but the loan could have gone up to a couple of hundred thousand dollars and we still would have probably been content.

BY MR. CAMPBELL:

Mr. Platten, did the loan in fact, ever go as high as \$200,000?

MRS. VORSANGER: Objection, Your Honor.

THE COUPT: Overruled.

MRS. VORSANGER: May we have the time specified?

THE COURT: Well, did it ever?

THE WITNESS: From what I have seen from our records, it did not go up that high. It went up to around \$100,000 perhaps, but I am not certain if the records show there, it's something -- here are the records, you have them, yes.

THE CLERK: Mrs. Vorsanger has them.

THE COURT: As I recall it was \$70,000, Mr. Campbell. But at that time, unless the records are incorrect it shows other collateral coming into the picture.

THE WITNESS: Well, I think that's where -- where -

THE COURT: That may be in here.

THE WITNESS: That may be a problem.

MR. CAMPBELL: Your Honor, we'll leave the disposition

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Reel 13. 2/2/71 2:30 p.m.

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AFTERNOON SESSION

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MRS. VORSANGER: Agatha Vorsanger for the respondent.

MR. CAMPBELL: John Campbell, Robert Whoriskey, and

Anthony Leitner for petitioner. He'll be right here,

sir.

MR. WHORISKEY: Good afternoon, Your Honor.

THE COURT Good afternoon.

MRS. VORSANGER: Your Honor, at this time the parties would like to offer the stipulation of facts in this case, together with Exhibits A through C, and Exhibits 1 through 19.

THE COURT: The stipulation will be received and made a part of the record.

MRS. VORSANGER: Furthermore, Your Honor, the parties have reached settlement with respect to all but the contemplation of death issue, and at this time we would like to read the settlement figures into the record.

THE COURT: Very well.

A, as shown on page 2 of the statutory notice, the respondent concedes item 8A, item 26A, item 30A, 39A, and 55A, and 56A, which aggregates \$11,743.25.

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move at this time for leave to withdraw the Exhibits in the record for purposes of copying the same and then return them to the Court?

THE COURT: The permission to withdraw exhibits will be granted to both parties for the purpose of making copies or substituting copies. The copies that are substituted, it is requested that they be legible.

MR. WHORISKEY: May I also stipulate with government counsel at this time for purposes of the Rule 50 computation, petitioner should be allowed such additional administration expenses as are permitted under Section 20-53 of the Internal Revenue Code of 1954, particularly with respect to the -- this litigation, and also with respect to the extent liable under that section to expenses for a special guardianship.

MRS. VORSANGER: Respondent has no objections, Your

MR. LEITNER: Your Honor, we have one additional stipulation relating to the -- to shares of stock which were forwarded by the decedent to the Metals Bank and Trust Company of Butte, Montana to secure loans made by that bank to the Ennis Company.

On August 9th, 1960, the decedent caused to be forwarded 700 shares of stock in Standard Oil Company of

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New Jersey to Metals Bank. On March the 21st, 1963, decedent caused to be forwarded from Chemical Bank 200 shares of stock of International Business Machines.

On October 7th, 1964, the decedent caused to be transferred from Chemical Bank 100 shares of International Business Machines to Metals Bank and Trust Company.

MR. WHORISKEY: May I proceed to call our firstwitness of the day?

THE COURT: You may, Mr. Whoriskey.

MR. WHORISKEY: I call Doctor Oppel.

THE CLERK: Do you solemnly swear that the testimony that you are about to give the court in this case will be the truth, the whole truth and nothing but the truth so help you God?

DR. OPPEL: I do.

THE CLERK: Would you state your name and home address for the record, please?

THE WITNESS: My name is Theodore Oppel. My home address is 203 Cliff Avenue, relham, New York.

DR. THEODORE OPPEL, called as a witness, having been duly sworn, took the stand and testified as
follows:

DIRECT EXAMINATION BY

MR. WHORISKEY:

Q Sir, what is your occupation?

	183a
	A Physician.
	Q Do you have any specialty?
:	A Internal medicine.
4	Q What is your office address?
5	A 260 East 66th Street.
6	Q Did you know the decedent in this case, Sumner Gerard.
7	Senior?
8	A Yes.
9	bid you know him as a patient?
10	A Yes.
11	Q During what period of time did you treat the
12	decedent as a patient?
13	A From 1946 until he died.
14	Q Sir, for your information we have stipulated that
15	the decedent was born in 1874 and that he died on March 10,
16	1966. I direct your attention, sir, to the decedent's
17	hospitalization at New York Hospital, which we have stipulated
18	was from the period October August 7, 1959 to October 25,
19	1959. Do you know what required that hospitalization?
20	MRS. VORSANGER: Hospital records as stipulated.
21	MR. WHORISKEY: May we give Doctor Oppel the
22	opportunity to refresh his recollection from his own
23	records?
24	THE WITNESS: I have a summary letter in here. I
25	think it - where is that summary letter that I cont

1 here, has all the dates and everything on it. April-2 19597 3 BY MR. WHORISKEY: 4 Sir, the hospitalization was for the period August Q 5 7, 1959 through October 25, 1959. 6 MR. WHORISKEY: Mr. Clerk, may I have Exhibit 1, 7 please? 8 THE CLERK: 1 to the stipulation. 9 THE WITNESS: That hospitalization was because of 10 acute gall bladder attack. 11 BY MR. WHORISKEY: 12 Sir, may I hand you Exhibit 1 in evidence to 13 refresh your memory? 14 λ Yes. 15 Have you had an opportunity to review Exhibit 1 16 in evidence? 17 A Yes. 18 Q Was the decedent operated on for a gall bladder 19 attack? 20 ·A Yes. 21 What was the result of that operation? Q 22 He developed an intestinal obstruction during the 23 period in convalescence and had to be operated on again. 24 Was that during the period that he was hospitalized? 25 Namely August 7 through October 25, 1959?

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the hospital during that illness?

A Yes.

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Yes.

Q How would you describe his condition following that illness -- that hospitalization, rather? Was he in a weakened condition, sir?

Did you treat the decedent after his release from

A Yes. No more than you would expect for a man of his age, with going through this type of procedure.

Q Did you see the decedent on a regular basis following his release from the hospital on that occasion?

A Yes, I did.

Q Approximately how often would you see him?

A From once a week to once in two months.

Q Did you see him in your office or at his home?

A At his home.

Q What were the decedent's major complaints during these house visits?

A He was short of breath --

MRS. VORSANGER: Your Honor, may we have the time specified, please?

BY MR. WHORISKEY:

Q This is the period, sir, following his release from the hospital in 1959.

A He was short of breath and he was weak.

1	Q Was the decedent how long did it take the
2	decedent to recuperate from the effects of the 1959 operation
3	sir?
4	A About three months.
5	Q Following that recuperation, would you describe
6	his mood or attitude as being grim or morose to any extent?
7	MRS. VORSANGER: I object to that, Your Honor.
8	THE COURT: Overruled.
9	THE WITNESS: Not particularly.
10	BY MR. WHORISKEY:
11=	Q Was the how would you describe the decedent's
12	intellectual abilities?
13	MRS. VORSANGER: Objection, Your Honor.
14	THE COURT: Sustained.
15	BY MR. WHORISKEY:
16	Q Was the decedent -
17	THE COURT: Did the decedent show any evidence of
18	senility at any time during your treatment of him,
19	Doctor Oppel?
20	THE WITHESS: No.
21	THE COURT: Thank you.
22	BY MR. WHORISKEY:
23	Q Was he aware of the current events and aware of
24	his surroundings?
25	MRS. VORSANGER: Objection, Your Honor.

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THE COULT: Sustained.

BY MR. WHORISKEY:

Was the decedent preoccupied with the thought of death from the visits that you made with him?

MRS. VORSANGER: Objection, Your Honor.

THE COURT: Sustained.

MR. WHORISKEY: Your Honor, I take exception to that. Would government counsel please state the basis of her objection?

MRS. VORSANGER: The objection has been sustained, Your Honor.

MR. WHORISKEY: Your Honor, may I --

THE COURT: I don't think that the decedent ever consulted Doctor Oppel in any mental capacity. You are not a psychiatrist are you, Doctor?

THE WITNESS: No.

THE COURT: I didn't think -- I don't think that the question is calling for a non-expert opinion of this witness. If counsel wants to ask whether or not, or discussed dying with the decedent at the time, at the occasion or specific time of any of these treatments, I think that would be admissible, but --

BY MR. WHORISKEY !

Doctor Oppel, did the decedent have emphysema?

Yes.

1	Q Did he also have chronic bronchicis?
2	A Yes.
3	Q Can you describe what emphysema is, please?
4	A It's an over distension or over expansion of the
5	lung, which interferes with the proper exchange of air.
6	Q What are the effects of a case of emphysema in a
7	patient?
8	A Shortness of breath.
9	Q What were the effects on the decedent of his
10	emphysema?
11	A It kept him confined to the house.
12	Q Would you please describe what chronic bronchitis
13	is?
14	A A chronic bronchitis is an inflammation of the
15	bronchial tubes.
16	Q What would the effects of this disease be upon a
17	patient?
18	A Cough and raising sputum.
19	Q And what were the effects upon the decedent?
20	A The same.
21	Q Did the decedent have any other serious illness
22	during the period of time that you treated him following
23	the 1959 operation?
24	A He has a prostatic infection which recurred on
25	several occasions.

1	Q What was the cause of that, sir?
2	A Enlargement of the prostate gland
3	Q Was this a particularly uncomfortable affliction
4	for the decedent?
5 ,	A For only a short period.
6	Q Were any of the decedent's illnesses or affliction
7	following 1959 of a terminal nature? That is that they would
8	cause his death within a predictable period of time?
9	A Only the last one.
10	Q And what was the last of these again, sir?
11	A He was admitted to the hospital with intestinal
12	obstruction, and died of intestinal hemorrhage.
13	Q Sir, was that a as of 1959 or 1960, was it
14	predictable that he would be admitted with that type of an
15	illness and that he would not survive the treatment given in
16	the hospital?
17	MRS. VORSANGER: Objection, Your Honor.
18	THE COURT: Overruled:
19	THE WITNESS: What is the question?
20	THE COURT: Would you state the question again,
21	Mr. Whoriskey?
22	BY MR. WHORISKEY:
23	Q I asked whether or not it was predictable as of
24	1959 or 1960 whether the decedent would be eventually

hospitalized and would succumb to the particular disease

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mentioned?

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A No.

Was it at any time ever apparent that the decedent would die within any defined period of time, sir?

MRS. VORSANGER: Objection, Your Honor. Speaking of a 90, 91 year old man.

MR. WHORISKEY: Your Honor, I am trying to determine whether or not the decedent had any diseases that were so serious that his death would be eminent, or at least would fall within a predictable range of time.

THE COURT: What's the normal expectancy of a man ninety years old, Doctor Oppel?

THE WITNESS: A man how old?

THE COURT: Ninety years old.

THE WITNESS: Everyone has some expectancy, not more than six months or a year, probably, at ninety.

THE COURT: Now, you have practiced medicine for a long time, have you not?

THE WITNESS: Yes.

THE COURT: Did you ever have a ninety year old patient who didn't think about death?

THE WITNESS: I'm sure I never did. They not always discussed it with me, though.

THE COURT: I never had a ninety year old clientthat didn't either, Doctor Oppel. That's why I asked-

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Your Honor.

THE COURT: That's right. Objection will be

the hospital records, and they will speak for themselves

THE COURT: That's right. Objection will be sustained.

MR. WHORISKEY: Your Honor, I think we all begin to die on the day we are born, but I am trying to determine whether or not this decedent's physical condition changed from his hospitalization in 1959 through 1966. If it did change I think it is of some significance to the Court.

THE COURT: Well, I think then --

MR. WHORISKEY: If it didn't then I think that is also significant.

THE COURT: You might ask the doctor what his physical condition was as of -- at a specific date during that period so far as the records that doctor has available to him which would enable him to testify from his own knowledge.

BY MR. WHOMISKEY:

Q All right. Doctor, what was the decedent's physical condition as of the end of 1963?

A Here is a note of May '63 saying he made a good recovery from his gall bladder operation.

of, I would gather, guess -- assume the first early

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indications of his breathing problems, you would say that the decedent's health was normal for a man of his age? Would that be a proper characterization of what your records show, or would it be below normal for a man of his age, or better than a man of his age could expect to be?

THE WITNESS: I would say as good as you could expect for a man of his age with the illnesses that he had.

THE COURT: With the -- now what illnesses do you refer to there?

THE WITNESS: The chronic bronchitis and the emphysema.

THE COURT: Emphysema, so actually then, by reason of those illnesses, his condition wasn't as good as a man of his age would be if he didn't have these?

THE WITNESS: If he didn't have them.

BY MR. WHORISKEY:

Q And sir, was emphysema a terminal illness?

THE COUFT: Well, do you relate that to this
decedent or in general, because I recall just reading
that Senator Russell died of emphysema, so I would
assume that it can be a terminal illness, is that right,
Doctor?

THE WITNESS: It can be. I don't think it was in

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him out of the hospital, ask you how long you thought he had to live?

THE WITNESS: Not that I recall.

THE COURT: Thank you.

MR. WHORISKEY: No further questions.

CROSS EXAMINATION BY

MRS. VORSANGER:

from time to time became concerned about having cancer?

A I didn't understand the question.

THE COUFT: Let's -- I would urge counsel to specify the time and place and all.

MRS. VORSANGER: During 1961, 62, 0r --

THE COURT: I think also, counsel, if the decedent was in full control of his faculties and was not senile, and the doctor has testified that he was not, that he was a man of considerable intelligence and I think he would know that -- I think as the doctor will say, will testify, that the chances were very likely at that age that you would either -- that either your heart would fail, or you would develop some form of cancer. Has that been your usual experience with people of that advanced age, Doctor?

THE WITNESS. Well, it frequently is.

1 THE COURT: So that I think that even more so than 2 those of us who are exposed to the cigaret commercials, 3 why as you approach that age you are bound to be conscious of the fact that a great many of your contemporaries have 5 passed away with cancer. Did the decedent ever discuss 6 that with you, doctor? 7 THE WITNESS: What is the date you had in mind? 8 THE COURT: Let's say '63, or along in there. 9 THE WITNESS: I think she had a specific date in 10 mind. 11 MRS. YORSANGER: Either '61, '62 or '63. 12 THE COURT: The occasion of any of these treatments 13 that he had, did he ever discuss the -- of course, you 14 examined him for cancer everytime you had occasion to 15 put him in the hospital, did you not? 16 THE WITNESS: At one time he developed abdominal 17 pain where his gall bladder operation had been, and at 18 that time he was fearful he might have cancer. 19 BY MRS VORSANCER 20 When was that about, Doctor? 21 Well, I think we had him x-rayed at the time in 22 May of 1963. 23 THE COURT: I take it the x-rays were negative? 24 THE WITNESS: The x-rays were negative. 25 BY MRS. VORSANGER+

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THE WITNESS: The patient is now --

THE COURT: Well, let's read it then

MR. WHORISKEY: Your Honor, I object again. I think the question put to the witness is whether or not the record refreshes his recollection.

THE COURT: Well, the witness would prefer to read
the record rather than attempt to paraphrase it, since
it involves a judgement on his part as of that time. For
that purpose it will be received. You may read it,
Doctor.

THE WITNESS: "The patient is 85 or 86 and comes in now primarily now because he has been a little dizzy recently and wonders if he is going to have a stroke.

One morning within the last few weeks he became dizzy when he got up to go to the bathroom, thinks he fell."

THE COURT: Now, let me ask you, Doctor, do you have very many patients of advanced age, I would gather since you practice in the city, that a great many of your patients would be of an advanced age, is that --

THE WITNESS: Yes.

THE COURT: Is this uncommon on the part of a patient of advanced age to be concerned about having a heart attack or a stroke?

THE WITNESS: No, not at all.

BY MRS. VORSANGER:

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Q Now, Doctor, during this period as to which you have testified, and specifically '62 -- '61, 1962 and 1963, Mr. Gerard also had trouble with his kidneys and his bladder, isn't that a fact?

A Prostate, which affected the kidneys and the bladder secondarily.

Q And what affect did this have?

A It interfered with his passing of urine, it made him uncomfortable and at times he had fever from it.

Q And this occurred from time to time during this period?

A Yes.

THE COURT: When was this period, counsel?

MRS. VORSANGER: 1961, '62 and '63, Your Honor.

THE COURT: Was this also a common ailment of

your male patients of comparable age, Doctor?

THE WITNESS: Yes, and it responded quickly to treatment with him.

BY MRS. VORSANGER:

Q During 1963, Mr. Gerard also had problems with his vision occasioned by cataracts, isn't that a fact?

A Yes.

Q Now, with respect to his emphysema, sir, would this be a reason he was confined to his house?

A Yes.

Now, specifically during 1962 and 1963, Mr. Gerard was not able to get around was he, Doctor? He could not go walking and was taken out by wheelchair, isn't that a fact?

A I think he may have gone out some, but not very much.

Now, I am just wondering, Doctor, does a patient having emphysema and chronic bronchitis, does one condition aggravate the other, or is one of the conditions aggravated by the existence of the other?

A Well, the bronchitis aggravates the emphysema.

Q Now --

THE COURT: Now, at any time, Doctor, did you suggest to the decedent that a change in climate might improve his respiratory condition, or was this the type that would not be improved, in your opinion, by that?

THE WITNESS: I don't think it would have improved his condition.

BY MRS. VORSANGER:

Q And the emphysema itself could not be cured by medication either, could it, Doctor?

A No.

THE COURT: The answer was no?

THE WITNESS: No.

MRS. VORSANGER: No further questions, Your Honor.

THE COURT: Let me ask the doctor. Doctor, do you-

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he was well enough, or in good health -- or in good enough health to take a trip at any time that you recall after his gall bladder operation?

THE WITNESS: My recollection is a little hazy, but I think he did take a trip after the gall bladder operation.

THE COURT: Did he consult you at that time?

THE WITNESS: I don't recall whether I okayed the trip or not.

THE COURT: I see. Thank you.

BY MR. WHORISKEY:

Q Did the decedent ever communicate with you on any of his trips?

A Who wrote Gulliver's Travels?

Q Do you recal', sir, whether the decedent ever communicated with you on any of his trips?

A Do you mean now do I recall?

Q Yes, sir.

Yes.

Q Do you recall the decedent taking a trip to Montana in August of 1960, sir, and communicating with you at that time?

A I think you have a post card that he sent me from there.

Q May I hand you a document, sir, and ask you if this

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refreshes your recollection?

A It does.

Q And do you affirm the answer that you just gave?

That he did, in fact, send you -- that he did, in fact, communicate with you in August, 1960 from Montana?

A Yes.

Q I now hand you another document, sir, and ask you if that refreshes your recollection as to any trips the decedent might have taken.

A Is this the same day or the same place, they're both lontana, 1961.

Q So, sir, is your testimony that the decedent did, in fact, communicate with you from Montana in 1961?

λ Yes.

as to the decedent's rips to Montana in 1960 or -- is '61, is that the last year?

MR. WHORISKEY: He did, Your Honor, but his recollection was vague and I think you will find that the record indicates that Mr. Gerard, Junior, testified that his father made no trips after 1960, so I think this testimony clears up that point.

BY MR. WHORISKEY:

Now, you testified, Doctor Oppel, the decedent

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BY MR. WHORISKEY:

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Q Do your records indicate what your over-all impression was of the decedent as of August 14, 1965?

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MRS. VORSANGER: Objection, Your Honor.

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THE COURT: That is sustained. First, were you called upon to treat the decedent on August 14, 1965, is

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that why you have a record, Doctor?

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THE WITNESS: Right.

THE COURT: And what were you called upon to treat the decedent for?

THE WITNESS: He complained that he was getting weaker.

THE COURT: And what was your conclusion as a result of your examining him?

THE WITNESS: The impression was, "patient is doing very well".

THE COURT: Is that very well -- do you mean by that he was getting stronger, or you mean he was doing very well in view of his age and the fact that he had emphysema?

THE WITNESS: Very well in view of his age.

THE COURT: Thank you.

BY MR. WHORISKEY:

Q Sir, did you have an occasion to make a house visit to the decedent on November 15, 1965?

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MRS. VORSANGER: Your Honor, I object. Date of death is January 2, 1964,

THE COURT: That's all right. I think it is certainly pertinent to go right up until the date of the decedent's death.

THE WITNESS: September 15 --

THE COURT: 1965.

THE WITNESS: Yes.

BY MR. WHORISKEY:

Q Now, did you record any impression of the decedent upon that occasion, sir?

A Doing well.

THE COURT: Well, now, let's get back again to what was the purpose of the visit. You were called upon to treat him, I take it? Or was this a periodic check-up that you made just to make sure that the decedent's condition had not deteriorated.

THE WITNESS: I saw him four days before because he was constipated and then I went back to check on him.

THE COURT: To check on him. And so when you said he was doing very well, did you mean that the problem of which he had complained had been alleviated, or do you mean he was --

THE WITNESS: Yes.

THE COURT: Yes, so that

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1 that the word deteriorate, I'm afraid, isn't-a-medical-2 term, is it doctor? Is that -- do you know what is 3 mean by deteriorated in that question? THE WITNESS: Well, it is used as a medical term. 5 THE COURT: I see. Well, would you say that during 6 1963 and 1964 the decedent's emphysema got better or 7 worse, or no change? 8 THE WITNESS: No particular change. 9 THE COURT: And his bronchitis got better or worse 10 or no change? 11 THE WITNESS: No particular change. 12 THE COURT: Now, between 1961 and 1963 would you 13 say that his emphysema got better or worse or no change? 14 THE WITNESS: No change. 15 THE COURT: Between '61 when he went to Arizona 16 and '63, would you say he was capable in 1963 of making 17 a trip to Arizona? 18 THE WITNESS: He did. 19 THE COURT: In '63? MR. WHORISKEY: Sir, there is no evidence in the 20 21 record that he did. THE COURT: I'm afraid that the witness will have 22 to refresh his recollection as to his record. That's 23 the problem with, I think --24 25 THE WITNESS: On, I see. I didn't think he was

1	you want.
2	Q Would you refer to your records then.
3	A I don't see any record of it.
4	MR. WHORISKEY: Thank you, Doctor. No further
5	questions.
6	THE COURT: Mrs. Vorsanger?
7	RECROSS EXAMINATION BY
8	MRS. VORSANGER:
9	2 Doctor, isn't it a fact that as of November 4, 1963,
10	the decedent's emphysema, in fact, became very aggravated?
11	THE COURT: You may refer to your records, Doctor
12	MRS. VORSANGER: May I refresh your this is a
13	copy of your letter from the file.
4	THE COURT: and see whether you have any record of
5	that.
6	MRS. VORSANGER: I will show you the one in your file
7	if you prefer.
8	MR. WHORISKEY: Sir, does the question refer to the
9	particular occasion, or to a permanent condition?
0	THE COURT: No, it refers to that particular occasion
1	as I understand it, counsel.
2	THE WITNESS: No, I don't think his emphysema changed
3	appreciably during those years.
4	MRS. VORSANGER: May I have this marked for identi-
5	Eication?
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1	name and home address for the record, please?
2	THE WITNESS: James A. Schnars, 160 Cabrini
3	Boulevard, New York City.
4	THE CLERK: Would you spell your last name, Mr.
5	Schnars.
6	THE WITNESS: S-c-h-n-a-r-s.
7	THE CLERK: Thank you.
8	JAMES A. SCHNARS, called as a witness, having
9	been duly sworn, took the stand and testified as follows
10	DIRECT EXAMINATION BY
11	MR. LEITHER:
12	Q Mr. Schnars, where are you employed?
13	A Chemical Bank.
14	Q Where?
15	A 11 West 51st Street.
16	Q How long have you been employed with that bank?
17	A March, 1960.
18	Q At that branch?
19	A At that branch.
20	Q In what capacity were you employed in 1960?
21	A I began as a teller.
22	Q For how long were you a teller?
23	A About two months.
24	Q Thereafter, in what departments or branches of the
25	bank did you work, and for how long?

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1 I was in the clearance department for about nine 2 months, foreign exchange for several years, and finally into 3 loan. 4 About what time was what period did you begin 5 your work in the loan department? 6 I think around 1965. 7 Towards the end of 1965? Q 8 Around the transit strike era, if you recall the 9 date of that. 10 In what capacity were you then employed in the loan Q 11 department? 12 I was at that time a junior/clerk. A 13 In what capacity are you employed right now? 0 14 A I am the supervisor of the department. 15 During the period when you were employed as a junior Q clerk, and presently as a senior clerk, have you always worked 16 17 in the loan department between 1965 and the present? 18 That is correct, yes, sir. 19 I hand you Exhibit 144, which has been received in 20 evidence. Do you recognize that? 21 Yes. A 22 What is it? 23 It's a time loan card. 24 Are you, were you in 1965, at any time when you

were in the loan department, engaged in the preparation or in

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1	-writing?
2	A Yes.
3	Q Did you make that entry into the other cards.
4	λ Yes, I did.
5	Q On what occasions?
6	MRS. VORSANGER: May we have the writing referred
7	to read into the record?
8	THE COURT: Is that transferred to new DL card on
9	8/22, is that the writing you refer to?
10	MR. LEITNER: Yes, sir.
1	THE COURT: 8/22 when, do you know what
2	THE WITNESS: 1966.
3	THE COURT: 1966.
4	BY MR. LEITNER:
5	Q And you were employed as a loan clerk in 1966?
6	A That's right.
7	Q You made that entry on or about August the 22nd,
8	1966. What does D stroke L mean?
9	A Demand loan.
0	THE COURT: So you transferred all of these you
1	transferred the balance in the time loan account, and
2	I guess there were two time loan accounts at that time,
3	is that right?
4	THE WITNESS: That is correct.

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THE COURT: And you transferred those both over to one demand loan and consolidated your collateral, is that about what you did?

THE WITNESS: Yes, we made two demand loans out of the time loans.

THE COURT: Oh, you had two separate demand loans?
THE WITNESS: Yes.

BY MR. LEITNER:

- Q I call your attention to 147 and 148. Do they represent two different demand loans?
 - A Yes, they do.
 - Q How do you know by looking at the cards?
- A The upper left hand corner has a designation of number 1 on one card and number 2 on another.

between the time loan and the demand loan is the ability to raise and lower the rates of interest, isn't that right?

THE WITNESS: That is correct.

THE COURT: In other words, a demand loan, as long as your collateral is adequate, is not going to be called any sooner than a time loan, is that right?

THE WITNESS: That's right.

THE COURT: Thank you.

MR. LEITNER: I call Your Honor's attention to the

1-To-Go

BY MR. LEITNER.

Q Mr. Schnars -- both Exhibits 147 and 148 contain entries on the front of them which show entries up to, I believe the date is January 18th, 1971 on each card. Would these be cards which are still current?

side, the colleteral side of the last two Exhibits

- A They're current.
- Q Loans which are still current?
- A Loans which are still on the books.
- Q Would it be possible by reference to the reverse side of the Exhibits to determine what collateral is presently held, or what stocks or securities are presently held as collateral for those loans?

A Yes.

MRS. VORSANGER. I object to that Your Honor 1971

THE COURT: Well --

MR. LEITNER: The present time, yes.

THE COURT: Present time. I don't know. One of things that I might mention along these lines. I think we had a lot of testimony in relation to the Ennis Company, but actually I am beginning to wonder now whether any of that had any particular bearing here except to the extent of showing that Mr. Gerard, Junior's income from that source was limited because the majority of the stock was owned by Mr. Gerard, Senior, and I guess any financial

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NEW YORK HOSPITAL .

messiore Oppel

EXHIBIT No. 1

::1232D:

r.com:

TATION:

TPLICATION:

SPOSITION:

Time

8-7-59 10-25-59

Gerard, Summer M &5 D

83 08 77 Pri Surg. 1712

: CICIS:

Chronic cholecystitis with cholelithiasis

: Common duct stone

Arteriosclerotic heart disease

Cholecystectomy

Choledochotomy with removal of common duct stone

T-tube drainage of common bile duct

Dr. John Eckel 8-13-59 General Exploratory laparotony with release of adhesions Resection of portion of the ileum

Dr. Cranston Holman 8-26-59

Postoperative small bowel obstruction

Septicemia. Hyp@tension

Urinary retention

Improved

Discharged to care of private physician

First MYH admission

CHEF COMPLAINT: 'Abdominal pain, two years' duration

MESENT ILLNESS: According to the patient, who is a fair informant, he was well up to about two years ago, when he first noted the onset of dull pain, aching in nature, in the right upper quadrant of his abdomen. Since then, he claims to have had this pain every four to five days. The pain is steady, does not radiate, and lasts almost all day, and frequently keeps his awake at night, bofore it slowly subsides. Trese attacks, he believes, are caused by imprudence, in eating too fast, or not wisely. The patient does not eat fat, and is anoremic during these avendes of pain. The pain is made better by rest and cartharties. The last episode occurred four night prior to admission. He admits to occasional morning nausea, but there is no history of vomiting, indigestion, hemitemesis, jaundice, or melena. He is occasionally constipated, and is frequently distended with gas. Gallbladder x-rays were taken one month prior to admission, appearently with nonvisualization. These were repeated with pills, instead of liquid, and again unsuccessful. He has lost eight pounds of weight in the last six months.

PAST HISTORY: General health good. No serious illness or disease. Surgery -Prostatectomy in 1951. Family history and Systemic review - Non-contributory.

HYSICAL EXAMINATION: EP 130/70 P 72, regular Patient is a slight elderly, old man, lying in bed, in no acute distress.

Positive physical findings: Neek - il webes in mid line. Thyroid not enlarged to palpation. Chest - Full, hyperresenant whroughout; breathing much with accessory muscles; distant breath sounds, with scautered rales bilaterally below mid-scapular line. Occasional rhonei on right. Heart - Normal sinus rhythu; border not percussible. Heart sounds regular, very faint. Split A2. Abdomen - Flat. Liver and spleen not felt. Some tenderness and guarding in right upper quadrant.

83 08 77

IABORATORY: Urinalysis within normal limits

Hemogram: Within normal limits

Blood chemistry: BUN 13, CO2 22, chlorides 83, sodium 112, potassium 4.6, phos. 3.2, acid phosphotase 0.2, alk. p-tase 3.8, bilirubin 0.8. Total

proteins 3.9 with AG/ratio 2.2/1.7. Stool guaice: Positive on the occusions.

Blood culture: Alpha strep.

Urine culture: Pseudomonas pyocyanea, gamma strep.

EKG: Essentially normal

X-Ray of chest: Evidence of pulmonary emphysema, with aortic dilatation, tortuosity, sclerosis and buckling and bilateral old apical infiltrates G. B. Series: Nonvisualization on two occasions.

CCURSE: The patient was admitted to the hospital on a Medical Service for evaluation. It was decided that he probably had gall stones at the basis of his symptoms. He was seen in consultation by Dr. John Eckel who recommended cholecystectomy. On 8-13-59, he underwent cholecystectomy with choledochotomy with removal of common duct sine and T-tube drainage of the common bile duct under general anaesthesis. He tolerated the operation well, and his immediate postoperative course was unremarkable. The drain was removed on his fifth postoperative day. In his seventhpostoperative day, he began to vomit frequently, and became distended, and febrile. A Cantor tube was passed for drainage. It became evident that the patient had an acute small bowel obstruction, and on 8-26-59, he was re-emplored, with the release of adhesions, and resection of portion of the fleur by Dr. Cranston Holman under general anaesthesia. He revolved 1000 cc. of whole blood during surgery. His postoperative course was extremely stormy. He became hypotensive, and had to be maintained on Levophed. He also developed a febrile course with a positive block culture. The Foley catheter had to be passed because of urinary retention. He was fed through his gastrostomy Curing the stormy postoperative days, and out-downs had to be performed to supplement intravenously. On his minth post-re-exploration day, the drains were removed and the remaining black silk skin stitches were removed. The patient rallied and slowly began to improve. He became afebrile, and was bble to take food by mouth. The gestrostomy tube was removed on October 12,1959. Some attempts to remove Foley entheter were hade, but he promptly went into urinary retention. On 10-13-59, the Foley catheter was removed, and the patint began voiding in adequate amounts. He continued to do well, and was discharged on his seventy-minth posters rative day to the care of his private physician.

11-24-59 vah

Copy to:

Dr. John Eckel

Dr. Cranston Holman

Dr. Theodore Oppel

Dictaved by Dr. William Grafe

211a

THE NEW YORK HOSPITAL

SUMMARY

EXHIBIT No. 2

PATIE

GERARD, SUMMER

2nd____ H.Y.H. ADMISSION 90 M W D

George Armisted Priv Med F17

A.DM.T.T.D DISCHARGED

12/18/64 1/6/65

83 08 77 Improved

L'ASHOSIS

Hiatus hernia with gastro-intestinal bleeding

Chronic broachitis

Emphysema

Benigh prostatic hypertrophy

Arteriosclerotic cardiovascular disease

Senile dementia

ASSOC COND:

Cardiomegaly

Congestive heart failure

Urinary retention

OPERATIONS:

None

COMPLICATIONS:

None

DISPOSITION:

To return to the care of his private physician

CHIEF COMPLAINT:

Vomiting

PRESENT ILLNESS: Since his gallbladder operation five years prior to admission, patient has intermittently had cell scoing non-radiating right upper quadrant discomfort, relieved by food. Pain was never. severy however, until two days prior to admission when he developed severe constant, non-radiating right apper quadrant pain, with nausea and frequent vomiting of black"coffe ground lacking reterial. This has continued up to the time of admis lan, but was not as bad the day of admission. The only stool was two lays police to admission, which was not observed, and he has had no benel resement since. Patient was seen by Dr. Armisteed and scheduled har admission because of gastrointestinal bleeding. He has had no change in boxel habits, no constipation or diarrhea, and non know alear history. Abdominal pain has not been related to position.

FAST HISTORY: Chronic cough, predictive of large amounts of thick sputum for many years, with x-ray emissions of emphysema in 1959, and gradual increase in cough since, all hour recent change. History of several years frequent hesitancy, and mastered retention, requiring estheterization, and transurethral remains in 1950, but with hesitancy continuing since.

HATLY HISTORY:

ENTER OF SYSTEMS:

THE NEW YORK HOSPITAL

SUMMARY

PATIENT

N.Y.H. ADMISSION

CETTINGA DISCHARGED 83 08 77

DIAGNOSIS

HYSICAL EXAMINATION: T 37.3 P 85 R 17 Patient is a thin, wasted, ninety-year old white male with severe BP 90/50. productive cough. Positive physical findings limited to the eyes - bilateral lenticular opacities. Lungs hyperresonant with low diaphragms, no dullness. Scattered wheezes and rhonchi of lung fields, without fine rales. Meart -PMI 6th intercostal space, anterior axillary line, M1 equal to M2, A2 greater than P2. Sounds faint except at PMI, Grade III/VI late systolic murmur heard well only at PMI, no gallop/ Vessels - loud bruits over both femorals, iliacs, and entire abdomen. Pulses - full and equal except decreased left posterior tibial. Abdomen - without tenderness or palpable masses. Skin - thin, dry, with poor turgor. Testes - atrophic. Rectal prostate enlarged times two, and uniformly hard. Extremities - mild osteoarthritic deformities of fingers, no clubbing or edema. Neurologic examination - not oriented to year. Decreases vibration to light touch, both knees down bilaterally. Coarse transmost extremities. Deep tendon reflexes 1 plus, except absent ankle jerks. Strongly positive suck, shout, and grasp reflexes.

Hemogram - hematocrit 35.5, who 13.2, shift to left. Urine - negative on edulation, with microscopic pyssia and hematuria later

Stool guaise - negative to 4 plus, to negative.

Urine culture - No consistent pathogen.

Sputum culture - mixed flora. Sputum for acid fast bacilli -

Blood chemistry - BUN 30, falling to 22, sodium 133, potassium 4.4, phos 2.2, acid p-tase 2.2, alk p-tase 3.1, CO2 23, chloride 92.

K-rays - Chest - Rotoscoliosis of the thoracic spine. Calcification in the sorta and fibronodular infiltration in both spices. Increased AP diameter, consistent with emphysema. Increased density in left lower lung field, presumably represents calcified costal cartilage, ntravenous pyelogram - Negative.

astro-intestinal series - Large histus hernia with reflux. Large Guodenal diverticulum note. No duodenal ulcer or other abnormalities demonstrated. putum cytology - Negative.

lectrocardiogram - Pattern of anterolateral myocardial infarction, with peri-infarction block persists, without significant change. Slight ST segment and T wave abnormalities persist.

In the hospital the patient was treated with a gastric diet, nd maalox. On this regimen abdominal symptoms subsided, and patient's cools eventually became guaine negative. Lecause of progressive difficulty in

213a SUMMARY. THE NEW YORK HOSPITAL PATIENT H.Y.H. ADMISSION ADMITTED DISCHARGED DIAGNOSIS voiding, the patient had to be catheterized with a Foley catheter, and because of a three hundred cubic centimeter residual found, the catheter was left in. The Foley catheter could not be kept out prior to discharge because of persistent difficulty in voiding with the catheter out, and large residuals. The patient's chronic lung disease was treated with tetracycline and intermittent positive pressure breathing with isoprel. During the hospitalization he continued to have a productive cough, and shortness of breath, with minimal exertion. The lung findings did not improve during the hospitalization. Tatient was discharged on digitoxin 0.1 milligrams per day. Dictated by Dr. William R. Scott 18. 10. 70 81has D:. George Armistead Russell W. Lavengood Dictator february 10, 1965

HIBIT NO. 3

GERAID, SUMNER

3rd N.Y.H. ADMISSION Theodore Oppel

91 M W Div Priv Med F16 12-5-65 HIST. 83 08 77

12-13-65 Emproved

SIASNOSIS

Chronic brond. The and emphyseen with superimposed

acute brone fils

ASSOC. COND:

Severe generalized exceriosclerotic cardiovascular

disease

Chronic organi prais syndrome

Benigh prostoric hyanters by with urinary retention.

. and azote.

Hiatus hernia al bilaceral senile cataracts

CPERATION: COMPLICATION: DISPOSITION: None

To care of printe . pefalan

CHIEF COMPLAINT: Weakness

with cough productive of thick white sputum for many years. He also has arteriosclerotic cardiovascular disease, general cachexia, chronic brain syndrome, urinary retention with indwelling catheter. He smokes three packs daily for many years having stopped three years ago. He has a large hiatus hernia which bled about one year ago.

Over the past year, he has progressively become weaker and for the past several menths has been essentially confined to bed in a wheel-chair. This morning, he was extremely weak refusing to get out of bed at all. He also complained of generalized body aching pain and had a temperature of 100° Fahrenheit. His cough was no worse than previously but he was not able to raise his secretions as well as usual. Because of these symptoms he was admitted. His physician claimed that he always has rales and rhonchi with a productive cough.

MAST HISTORY, FAMILY HISTORY AND REVIEW OF SYSTEMS: Non-contributory.

MAYSICAL EMAMINATION: T. 33.5 P.90 R. 26 BP. 110/70
An emiciated, white male in no distress. Positive physical findings
were limited to: Skin - Dry, thick and attrophic. Head - Atrophic
temporalis muscles. Eyes - Bilateral pigmented dense cataract was
present which obscured the funci. Lungs - Generalized rhonchi more

THE NEW YORK HOSPITAL

SUMMARY CONTINUED

PATILIT

PAGE.

2 "0 83 08 77

marked at the posterior base bilaterally. A few scattered wheezes were present. No rales. Heart - LBCD was one half way between theanterior axillary line and the midclavicular line. A systolic thrill was felt at the apex. A grade 111/1V systolic murmur was heard at the apex which radiated to the left sternal border. No rubs or gallops. An occasional premature contraction was heard. Rectal - Prostate was 35 grams hard with a nodule on the left side. Pulses - Bilateral systolic femoral bruits were heard. Neurological - Generalized Gegenhalten was present. Toes were bilaterally upgoing. Shout and suck reflex were present. Higher intergrative functions were generally diminished.

IABORNTORY: CBC: Hgb 10.5, hct 37, WBC 22 with a shift to the left. Repeats revealed the WBC dropping down to 8.5 with a normal differential. Urinalysis: Sp gr 1.012, reaction 5, 1+ protein, O sugar, 1-3 RBC, 20-25 WBC, O casts per HPF. Repeat revealed no change.

Stool guaiac: Negative once, trace positive twice.

· VDRL: Negative.

Blood chemistry: Electrolytes - Normal.

SGOT: Normal.

SGPT: Normal.

HBD: Normal .

LDH: Normal.

FES, acid P'tase, alk P'tase: Normal. BUN 26 rising to 36. Creatinine 2.4 rising to 2.7.

Blood culture: No growth.

Sputum culture: Many E. coli.

Urine culture: E: coli. Organism in both cases were sensitive to chloramphenicol and gantrisin as well as ampicillin, naladixic acid, furadantin, kanamycin and streptomycin. It was resistant to tetracycline. EKG: The pattern of anterolateral myocardial infarction with peri-infarction block persists with no change.

Chest x-ray: The aorta is tortuous, and showed calcific plaques. Fibrotic infiltration is seen in both upper lobes. A parenchymal infiltration is also seen in the left base probably representing a recent pneumonic process.

Sputum specimens: Class 1 cytology x2.

Repeat chest x-ray: The pneumonic infiltration in the left base reported previously has shown some clearing. The lung fields showed advanced emphysematous changes.

COURSE: On admission, the patient had a chronic cough productive of thick, misoid, white sputum which was reportedly unchanged, although from the history given appeared to be somewhat more severe than usual. He was treated with tetracycline with a rapid lysis of his fever and improvement in his general well being. Because of a rising blood urea nigrogen the tetracycline was discontinued and gentrisin was begun. When becterial sensitivities returned it was found that the organism was sensitive to gentrisin and resistant to tetracycline. On this plus a regimen of chronic pulmonary toilet the patient did well, raised his secretions and was discharged to the care of his private physician.

Dictated by Dr. Lance D. Redler

1-10-65 cb Copy to: Dr. Theodore Oppel, Dr. Russell Laveagood cc: Dr. Lance D. Redler, Dr. Francis Weld

have D. Redler

THE NEW YORK HOSPITAL

SUMMARY

EXHIBIT NO. 4

- PATIENT

GERARD, SUNITER

Expired

DR. Theodore Oppel

91 M W Div SP Med H3

Gram negative Sepsis

ADMITTED 2/7/66 DISCHARGED 3/10/66 HIST.

83 08 77

DIAGNOSIS

Small bowel obstruction
Chronic obstructive lung disease with
acute respiratory acidosis
Bilateral pneumonia
Hypotension, secondary to above
Gastrointestinal bleeding of unknown site
Arteriosclerotic cardiovascular disease with
organic brain syndrome
Metabolic encephalopathy, secondary to above
Uremia, secondary to
acute renal failure, tertiary
to above

ASSOC. COND:

OND: None
N: None

OPERATION: COMPLICATIONS:

None

DISPOSITION:

The patient expired. Autopsy performed

CHIEF COMPLAINT: Vomiting.

INTERVAL NOTE AND

PRESENT ILLNESS: The patient has had numerous operations in the past including cholecystectomy, choledochotomy with removal of common duct stone, with previous complications of small bowel obstruction, hiatus hernia, and gastrointestinal bleeding. He was admitted with a history of a one day episode of vomiting including hematemisis. The patient did not pass any stool for two days prior to admission. He has had no flatus. His abdomer has become somewhat distended.

The patient has also been admitted to the hospital for bronchitis and emphysema with a superimposed acute bronchitis. He has a long history of chronic bronchitis and emphysema.

PAST HISTORY: The patient has had benign prostatic hypertrophy with a transurethral resection of prostate in 1960. At the time of admission he required chronic indwelling Foley catheter. Bilateral senile cataracts. Generalized arteriosclerotic cardiovascular disease without congestive heart failure. The patient had been digitalized in the past.

FAMILY HISTORY: Not contributory.

THE NEW YORK HOSPITAL

SUMMARY CONTINUED

PATTERT GERARD, SUMMER

83 08 77

REVIEW OF SYSTEMS: Cardiorespiratory - the pstient sleeps propped up in bod; has shortness of breath on exertion; the patient was pretty well confined to bed.

PHYSICAL EXAMINATION: T 38.4 P 116 R 20 BP 90/50 The patient is a cachectic, chronically ill white male with audible rhonchi and wheezes, lying in bed with a Kantor tube in place. Venous pressure one hundred sixty milligrams of water at the right atrium. The positive findings include - Neck - distended neck veins with some filling from below. Lungs - thereased anterio-posterior diameter with rapid respirations; diminished breath sounds diffusely; numerous coarse thought and whoseas heard diffusely; no rales. Heart - Point of maximum impulse at the seventh intercostal space at the anterior axillary line; Grade III. IV holosystolic murmur at the apex with palpable thrill. Abdomen - mildly distended without tenderness or guarding; tympanitic percussion note diffusely heard.

LABORATORY: Urine: (on admission) protein 1+; RBC 1-4; WBC 50-65. Blood: (on admission) hgb 9 grams; hematocrit 29; WBC 22,800; PMNs mature 64 with 29 bands. Smear showed anisocytosis and macrocytosis and occasional hypochromia and slight to moderate toxic granulation. Follow-up hematocrits ranged from 48 to 34 (at death); follow-up WBC's continued to be elevated to 29,800.

Stool guaiac: initially negative, became 4+. Reticulocyte count: ranged from 2.6 to 3.0.

Urine culture: colony count greater than 10:5, mixed flora, including pseudomonas, staph albus.

Sputum culture: staph alpha; E coli; many candida. Blood cultures: negative.

Culture of heart blood at postmortem: pseudomonas pyocyanea; Klebsiella. Culture of right lower lobe at postmortem examination: pseudomonas pyocyanca.

Blood chemistries: bilirubin, chlorides normal. CO2 combining power ranged from 32 to 28. Potassium was 4.0 (on admission) dropped to 3.4 and

returned to 5.2 (at death). Sdoium values were consistently normal. Sugar 134. BU.: (on admission) 39, dropping to 11 and increasing to 60 (311/66) and dropping again to 32; (at death) 53.

Transaminase: (on admission) normal. SGOT rose to 500; SGPT rose to 520; LDH 1440 (3/1/66)

Plasma volume: normal.

Blood colume: normal.

Twenty four hour urine: PH ranged from 6.94 to 7.49; POO2 ranged from 92 to 33; CO2 ranged from 14 to 41. Oxygen saturation at one point was 94.5 saturated.

Coombs test: . direct and indirect negative.

THE NEW YORK HOSPITAL

SUMMARY CONTINUED

PATIENT GERARD, SUMMER

NO. 3 NO. 83 08 77

EKG: (2/7/66) frequent atrial premature contractions with aberrant conduction with bundle branch block.

Abdominal x-ray: partial mechanical obstruction in the small bowel. Chest x-ray: (2/7/66) old calcified pleuritis on the left and old inflammatory disease on the tight spex. (2/18/66) slight infiltration in the right lung field. (3/1/66) pneumonic infiltration in the right lung.

COURSE: The patient did quite well on conservative treatment with Cantor tube of the small bowel obstruction and also blood transfusions. The patient was ready for discharge on the morning of February 28,1966; however during the night previous to that he had increased secretions. Coughed a lot of purulent material. His pulse was noted to be irregular that morning. Electrocardiogram showed wandering atrial pacemaker. His blood pressure dropped to 60. He was begun on aramine and at that point he was transferred to the Medical Service.

At transfer to the Medical Service the patient was hypotensive, shocky, was not putting out any urine. Blood gasses at that time showed acute respiratory acidosis. The patient was comatose. He had raics in his lungs. Venous pressure was elevated and he had frequent atrial beats.

After transfer to the Medical Service he was digitalized, cultured and started on methicillin, penicillin, and colistin. Was begun on a alternating Bird respiratory and venturia; however, this did not improve his respiratory acidosis and he required naso-tracheal intubation and use of first the Bird and then Air-Shields respirator. This produced good results in his blood gasses.

The patient ran a very complicated course in the following days, requiring isuprel and mannitol to bring up a good urine flow, continued digitalization. The use of the Air-Shields respirator was tapered and his endotrachear tube was removed. The patient did well on the twenty four per cent Venturi mask with the use of a DeVilbiss nebulizer and isuprel and intravenous and parenteral aminophylline to control his broncho-spasm. He also required intermittent doses of steroids to control his broncho-spasms and this was covered with maalox for his ulcer because he had four plus guaiac stools. In addition he required several units of blood for gastrointestinal bleeding.

After a few days a nasogastric tube was passed so the patient could be fed and provided with antacids.

HE NEW YORK HOSPITAL

SUMMARY CONTINUED

PATIENT GERARD, SUMMER

PAGE HIST.

83 08 77

There was an episode of atrial fibrillation, associated with hypokalemia which responded to potassium.

In a week's time on this regime he did quite well. He became responsive to questions, talked occasionally, had good urine outputs; stable hematocrit, good blood gasses on the Venturi mask, and even off the Venturi mask the patient was able to keep up his oxygen saturation. His blood pressure was stable. He became afebrile. His chest showed a pneumonic infiltrate and his gastrointestinal bleeding stopped.

Antibiotics were discontinued on March 9, 1966. The patient was placed on maintenance ampicillin; however, by March 10, 1966 the patient had a relapse. His urinary output diminished and his blood pressure became barely obtainable. On the evening of March 10, 1966, after rapid deterioration during the day with hypotension, anuria and increased coma the patient quietly expired.

Dictated by Dr. Robert J. Gottlieb

Copies to Dr. Cranston Holman (2)

Dr. Theodore Oppel

Dr. Russell Lavengood

Dr. James P. Smith

Dr. Robert J. Gottlieb

5/20/66 db

cc:

abut J. Sould M.I

·sull

EXHIBIT NO. 5

I, SUMNER GERARD, residing in the City, County and State of New York, do make, publish and declare this to be my Last Will and Testament, hereby revoking all wills and testamentary dispositions by me at any time heretofore made.

FIRST: I direct that all my just debts, other than such as are secured by mortgages, and the expenses of my last illness and funeral and of the administration of my estate, including ancillary administration, if any, be paid by my Executors as soon as may be convenient after my death.

SECOND: I direct that all estate, inheritance, succession and transfer taxes, together with interest and penalties thereon, if any, paid by my Executors by reason of my death with respect to any property, whether or not passing under this my Will, shall be charged against my residuary estate as expenses of administration and shall not be apportioned.

THIRD: I hereby expressly decline to exercise any power or powers of appointment I may have at the time of my death over any property, and nothing contained in this my Will shall be construed as exercising any such power or powers of appointment.

FOURTH: I give and bequeath all tangible personal property which I may own at the time of my death (including automobiles and boats, but not including cash on hand or on deposit, bonds, notes, mortgages or other evidences of indebtedness), excepting such items as may, at the time of my death, be owned by me and located on or used in connection with ranches in the State of Montana, to my issue me surviving

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in as nearly equal shares per stirres as may be, division among them to be as they may agree if all those entitled to share be of age or, failing agreement or if any of them be minors, to be made by my Executors, whose decision shall be conclusive and binding upon all persons interested. I hereby authorize and empower my Executors and Trustees to retain possession of any or all of the articles so set apart for any minor until he or she shall, in the opinion of my said Executors and Trustees, be of sufficient maturity properly to appreciate and care for the same, any expenses in connection with the storage, safekeeping and insuring of the same while in the possession of my Executors and Trustees to be paid out of such minor's share of the income of the trust for such minor's benefit under Paragraph EIGHTH (B) hereof, or to sell any of such articles so set apart for any minor, the net proceeds of any such sale to be paid over to such minor when he or she attains the age of twenty-one years or, if such minor should die prior to attaining such age, to his or her estate.

FIFTH: I give, devise and bequeath:

- (a) To each of my sons who survives me, twenty-five thousand (\$25,000) dollars, and if any of my said sons does not survive me, I direct that such legacy which would otherwise have been payable to any such son be paid to his wife, if she survives me.
- (b) To my sons me surviving in equal shares all real property interests and mineral interests (including royalties and overriding royalties) if any, which I may own at the time of my death or to which I may then be or may thereafter become entitled and which are located in the States of Alabama, Arkansas, California, Colorado, Idaho, Iowa, Kansas,

Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah and Wyoming, or in the province of British Columbia, Canada, and all such property and interests in the State of Montana, except any such property and interests which are a part of the Ennis Company mentioned in Paragraph EIGHTH or any successor to its business or property;

- (c) To my nephew, JULIAN M. GERARD, if he survives me, the sum of Two Thousand Dollars (\$2,000);
- (d) To JOHN TRAIN, son of Mrs. Helen Coster Train, if he survives me, the sum of One Thousand Five Hundred Dollars (\$1,500);
- (e) To CHARLES HENRY COSTER, of Warwick, New York, if he survives me, the sum of Five Hundred Dollars (\$500);
- (f) To HELEN COSTER TRAIN, of New York, New York, if she survives me, the sum of Two Thousand Dollars (\$2,000);
- (g) To my butler, JOHN HILL, if he survives me, the sum of Four Thousand Dollars (\$4,000);
- (h) To LOUISE HILL, wife of John Hill, if she survives me, the sum of Four Thousand Dollars (\$4,000);
- (i) To ILONA MORGAN, if she survives me, the sum of Nine Thousand Dollars (\$9,000), this legacy to be independent of and not to be diminished by reason of any salary which be paid to her as an employee of my estate during administration;
- (j) To my nurse, EDITH STERNERRE, ifxerexixximxmx S.G.

 S.G. Employxekxkhexkimexefxmyxdeathy the sum of One Thousand Dollars (\$1,000). İxfertherxdirectxthetxEdithxXternbergxbexdeemedxtexbe inxmyxemployxekxthexkimexefxmyxdeathxifxxhexmexximxmyxemployxek

 S.G. thexkimexixerxecadxaxhoxeitalximxwhichxmyxdeathxmaxmxmaxmxmax

 S.G.

SIXTH: I give and bequeath to my corporate Trustee

hereinafter named the sum of One Hundred Thousand Dollars (\$100,000) if both the aforementioned JOHN HILL and LOUISE HILL, his wife, survive me, or the sum of Fifty Thousand Dollars (\$50,000) if only one of them survives me, payable in cash or securities, IN TRUST to held, manage, invest and reinvest the same, collect and receive the income thereof and, after deducting all necessary and proper expenses and charges, to pay, out of the net income thereof to the extent of the same, any deficiency to be paid out of principal, the sum of One Hundred Seventy-five Dollars (\$175) to each of them on the first day of each and every month so long as they or either of them be living, any surplus net income to be added to principal not less often than annually and pending the setting up of this trust such payments shall be made by my Executors out of the general taxable income of my estate. If both the said John Hill and Louise Hill shall have survived me, then upon the death of the first to die, my corporate Trustee shall pay over one-half of the principal then remaining in its hands, and upon the death of the survivor of them (or if only one shall survive me then upon his or her death) shall pay over the balance then remaining in its hands, in equal shares, to the trusts then in existence pursuant to the provisions of Paragraph EIGHTH (A) hereof.

SEVENTH: I give and bequeath to SUMNER GERARD FOUNDATION, a Delaware corporation, provided that such corporation shall have qualified as an exempt organization under Section 501 of the Internal Revenue Code or its then equivalent within three years from the date of my death, an amount equal to 10% of my gross estate as finally determined for purposes of my federal estate tax, payable in the shares of common stock of

one or more of the following corporations (or any corporations succeeding them) which I may own at the time of my death at the value thereof as finally determined for federal estate tax purposes in my estate, in such proportions as my Executors in their absolute discretion may determine:

Aeon Realty Company
Old Lyceum Building Corporation
Semper Operating Company, Inc.
Immer Realty Corporation

EIGHTH: All the rest, residue and remainder of the property, real and personal and wherescever situated, which I may own at the time of my death or to which I may then be or may thereafter become entitled, hereinafter sometimes referred to as my residuary estate, I direct my Executors to divide into as many equal shares as may be required to provide one equal share for each son of mine who survives me or whose wife hereinafter named survives me and one equal share for the issue me surviving of each of my said sons who and whose wife hereinafter named shall both have predeceased me, and to further subdivide each share so set apart for the issue of a predeceased son into as many equal sub-shares per stirpes as there may be issue of such predeceased son me surviving and to hold each of such shares for the uses and purposes hereinafter in subparagraphs (A), (B) and (C) of this Paragraph EIGHTH expressed and I give, devise and bequeath the same to my Trustees accordingly.

If my son, SUMNER GERARD, JR., survives me, I direct my Executors, in making division of my residuary estate as S.G. above directed, to allocate to the share so to be set apart for

his benefit all the right, title and interest which I may own at the time of my death in and to any ranch or ranches in the State of Montana occupied or managed by my said son at the time of my death, together with the livestock, crops, improvements and personal property on such ranches which are (a) directly owned by me, (b) held by me in the form of a capital account or interest in the Ennis Company (a Montana corporation which succeeded a Montana limited partnership) or any successor, corporate or otherwise, to the business or property of said Ennis Company, and (c) held by me in the form of notes, obligations or debts of said Ennis Company (or any successor to its business or property), provided, however, that if the value thereof as appraised for Federal Estate Tax purposes shall exceed the share so directed to be set aside for the benefit of my said son, only so much thereof as shall equal his share shall be so allocated thereto and the same shall be allocated thereto in the order named, that is to say, first all of those in category (a) above, then those in category (b) above, and finally, if required to complete the value of such share, such part of those in category (c) above as may be requisite for that purpose.

(A) My Trustee shall hold, manage, invest and reinvest any share so set apart for my son, JAMES W. GERARD, II,
or for JEAN, his wife, any share so set apart for my son,
SUMNER GERARD, JR., or for LOUISE, his wife, and any share so
set apart for my son, CHARLES HENRY COSTER GERARD, or for
ALISON, his wife, shall collect and receive the income thereof
and, after deducting all necessary and proper expenses and
charges, shall pay so much of the net income as my corporate
Trustee in its absolute discretion may determine to such one or
more of (a) the scn of mine for whose benefit the same is so

held, (b) his spouse above named, and (c) his issue living from time to time or, if there be no such issue then living, my issue living from time to time, and in such amounts or proportions as my said corporate Trustee, in its absolute discretion, may determine, and shall accumulate any income not so paid out and add the same to principal not less often than annually.

My Trustees shall pay over the principal of each such trust as follows:

- (1) To the son of mine who is the primary beneficiary of such trust and, after his death, to his wife above named, such sum or sums as he or she may in writing request, not to exceed in any one calendar year the sum of Five Thousand Dollars (\$5,000) or Five percentum of the market value of the trust at the time of such request, whichever may be the greater.
- named of the son of mine who is the primary beneficiary of such trust, and (ii) his issue living from time to time, as my Trustees in their absolute discretion may determine, so much of the principal thereof as my Trustees may deem desirable and in the best interests of my said son's wife above named and his issue, and to said son so much of the principal thereof as my corporate Trustee in its absolute discretion may determine is necessary or desirable for the health, support and maintenance of my said son, even to the extent of the whole thereof.
- (3) To such one or more of the issue of the son of mine who is the primary beneficiary of such trust as such son may at any time and from time to time, by instrument in writing duly acknowledged, appoint and direct, and, upon the death of any such son, to such one or more of my issue as such son may, by specific reference hereto in his Last Will and Testament

duly admitted to probate, direct and appoint, provided, however, that any such appointment may take effect upon the subsequent death of the wife above named of such son or at such earlier time as he may provide.

(4) Any principal not paid over in accordance with any of the foregoing provisions shall, upon the death of the survivor of the son of mine and his wife above named, for whose benefit the same has theretofore been held, be divided into as many equal shares per stirpes as there may be issue of such son living at the time of the death of such survivor or, in default thereof, as there may be issue of mine then living and my Trustees shall continue to hold each of such shares, adding each share so set aside for a son of mine to the trust for his benefit then in existence hereunder or, if the same shall have theretofore terminated, holding the same for his benefit subject to all the terms and conditions in this subparagraph (A) provided and adding each share so set aside for a grandchild or remoter issue of mine to the trust for his or her benefit then in existence hereunder or, if none, holding the same for his or her benefit subject to all the terms and conditions in subparagraph (B) provided.

If any of my sons above named shall at any time become legally separated or divorced from his wife above named, irrespective of by whom such separation or divorce was sought and irrespective of fault, such wife shall, for all purposes under this my Will, be deemed to have died at the time of such separation or divorce and shall not thereafter be entitled to receive any income or principal hereunder.

(B) My Trustees shall hold, manage, invest and re-S.G. invest any share set apart, whether at the time of my death or at any time thereafter, for the benefit of any grandchild or remoter descendant of mine, shall collect and receive the income thereof and, after deducting all necessary and proper expenses and charges, shall pay so much of the net income as my Trustees in their absolute discretion may determine to such one or more of (a) the grandchild or remoter descendant of mine for whose benefit the same is so held, (b) his or her spouse and (c) the issue living from time to time of such grandchild or remoter descendant of mine, and in such amounts or proportions as my Trustees in their absolute discretion may determine and shall accumulate any income not so paid out and add the same to principal not less often than annually.

My Trustees shall pay over the principal of each such trust as follows:

- (1) To such one or more of the grandchild or remoter descendant of mine who is the primary beneficiary of such trust, his or her spouse and the issue living from time to time of such primary beneficiary so much of the principal thereof as my Trustees in their absolute discretion may deem desirable and in the best interests of such grandchild or remoter descendant his or her spouse and his or her issue, even to the extent of the whole thereof.
- (2) To such of the surviving spouse or issue of the primary beneficiary of such trust or such of my issue as such grandchild or remoter descendant of mine who is the primary beneficiary of such trust may, by specific reference hereto in his or her Last Will and Testament duly admitted to probate, direct or appoint.
- (3) Any principal not paid over in accordance with S.G. any of the foregoing provisions shall, upon the death of the

primary beneficiary of such trust, or upon the sooner termination of any such trust as in subparagraph (C) provided, be paid
over to such grandchild or remoter descendant of mine who is
then the primary beneficiary of such trust, if then living or,
if not, in equal shares per stirpes to his or her issue him or
her surviving or, in default thereof, to the next of kin of
such person who are of my blood or, in default thereof, to
those persons then living and in the proportions in which they
would be entitled to take the same if I had then died intestate,
unmarried, a resident of the State of New York, seized and
possessed of such principal.

(C) All trust hereunder shall terminate upon the expiration of twenty-one years after the death of the survivor of my issue living at the time of my death and if any principal shall then remain in the hands of my Trustees the same shall thereupon be paid over absclutely to the persons then entitled to receive the same as hereinabove provided.

NINTH: (1) Each determination of the Trustees with respect to any distribution of income or principal shall be in writing, dated and subscribed by the Trustees and filed with the records of the trust to which the same pertains. Determinations as to distribution of income may relate to a given period of time, whether the same be one or more calendar years or parts thereof, and may specify when, to whom and in what manner such income shall be paid or applied. In determining the persons to whom income or principal shall be paid and the amount to be paid to such person, my Trustees shall consider primarily the welfare of the son, grandchild or remoter issue of mine for whose benefit the fund under consideration is then

held and the spouse and children of such person and may ignore the interests of all other persons then or thereafter having any interest in said fund and shall not be required to inquire into the other resources of such person or his spouse or children.

- (2) Any request for payment of principal pursuant to subparagraph (A) (1) of Paragraph EIGHTH hereof or any appointment by deed inter vivos pursuant to subparagraph (A) (3) shall be operative only if such written request or written instrument is voluntarily delivered to my Trustees by a son of mine or, if pursuant to said subparagraph (A) (1), by his hereinabove named spouse during his or her respective lifetime.
- (3) In the event that three months after the death of any person to whom a testamentary power of appointment has been granted no notice has been received by my Trustees of the exercise of such power by the Will of the donee, my Trustees shall not be liable for any distribution of principal thereafter made as herein directed in default of the exercise of such power.
- (4) Any power of appointment herein granted whether exercisable inter vivos or by Will, may be exercised by appointment outright or upon further trust, and, if the latter, may be to a trustee or trustees other than my trustees and upon such terms and conditions as the appointer may direct and may grant further powers of appointment to one or more persons, which further powers may be general or limited, but no power of appointment granted by this my Will, whether inter vivos or testamentary, shall be exercisable in favor of the donee of the power (except under Paragraph EIGHTH (A) (1)

hereof), his or her creditors, his or her estate or the creditors of his or her estate nor to create a further power exercisable in favor of the donee of the original power of appointment, his or her creditors, his or her estate or the creditors of his or her estate. Where any such power is exercisable in favor of more than one person or a class of persons, appointments may be made to or for the benefit of one or more of such persons to the exclusion of all others, may be made in unequal amounts, and to or for the benefit of one or more members of a generation even if members of a prior generation are living at the time.

TENTH: Whenever any part of the income of any trust hereunder shall be determined by my Trustees to be payable to any person who is a minor or is, in the opinion of my Trustees, for any reason temporarily or permanently not in a position to or incapable of managing his or her own affairs for any reason, my Trustees are authorized in their discretion to pay or apply all or any part thereof to his or her support, education, maintenance and comfort or to pay over the same or any part thereof to either parent or to the guardian or committee of the person or of the property of such individual or to the person having the care and custody of such individual or with whom such individual resides, or directly to such individual, or by depositing the same in or crediting the same to an account in the name of such individual in any savings bank or other banking institution, or otherwise, as my Trustees may deem to be in the best interests of such individual, and my Trustees shall not be required to see to the application of such income to the use of such individual nor require bond therefor, and the

receipt of the person to whom such payment is made shall be full quittance to my Trustees.

ELEVENTH: No person entitled to receive any benefits hereunder, whether pursuant to the terms hereof or by virtue of the exercise of any power of appointment herein granted, shall have the power to mortgage or pledge his or her interest in any trust hereby created for any purpose nor to anticipate the receipt of any income or principal hereunder, and the right of any such person to receive income or principal shall not be subject to attachment by creditors.

TWELFTH: If any person shall become entitled to any share of my estate or to any part of the principal of any trust created by this my Will while under the age of twenty-one years, I direct that the same shall vest in interest but not in possession, and I authorize and empower my Trustees, during the minority of such person, to retain the same or, in their discretion, to pay over or deliver the same or any part thereof or the income thereof to either parent or to the guardian of the person or of the property of such minor or to the person with whom such minor resides or, in their discretion, to pay over the income or any portion thereof and to deliver any items of personal property directly to such minor or to apply the income and so much of the principal as they may deem advisable to the support, education, maintenance and comfort of such minor, and they shall not be required to see to the application of any sums so paid over to the use of the minor nor require bond therefor, and the receipt of the person to whom such payment or delivery is made shall be full quittance to it. All principal and income remaining in their hands shall be paid over to such

person upon his or her attaining the age of twenty-one years or, in the event such person shall die prior to attaining such age, to his or her estate. As Donees of the aforesaid Power in Trust my Trustees shall have all the rights, powers and duties by this Will given to them as such Trustees and shall receive as compensation for acting as such Donees the annual commissions payable to testamentary trustees pursuant to the Laws of the State of New York in force from time to time but shall be entitled to a termination commission upon paying over any property so held only if no termination commission with respect to such property or property previously held has theretofore been paid upon the termination of any trust which preceded such infant's interest.

THIRTEENTH: Should any one of the persons named or designated herein die in the same accident, disaster, epidemic or other catastrophe as shall cause my death, either simultaneously with me or so that it is difficult to determine who predeceased the other, I direct that such person shall be deemed not to have survived me, and the provisions of this my Will based on such contingency shall take effect accordingly.

Should any one or more of the persons named or designated herein or by the Will of any donee of a power of appointment granted herein as contingent beneficiary or remainderman of any trust die in the same accident, disaster, epidemic or other catastrophe as shall cause the death of any current income beneficiary, either simultaneously or so that it is difficult to determine who predeceased the other, I direct that such contingent beneficiary or remainderman shall be deemed to have predeceased such current income beneficiary, and the

provisions of this my Will or of the Will of such donee based on such contingency shall take effect accordingly.

FOURTEENTH: Whenever the right to receive income of any trust hereunder shall cease by reason of death, all income theretofore allocated or payable to such person but not then received by my Trustees shall, when received by them, be paid over, applied or accumulated for the benefit and account of the person or persons thereafter determined to be entitled to receive the income thereafter accruing and no part thereof shall be paid to the estate of the one so dying.

FIFTEENTH: Wherever the word "issue" is used in this Will it shall be deemed to include any person standing in the relationship of child or remoter descendant of the person whose issue is therein referred to, whether such person be of the blood of or adopted by the person whose issue are referred to or by any person in the line of descent from such person, to the end that any child adopted by any of my issue, whether before or after my death, shall, by virtue of such adoption, have all the rights of a natural child of the adopting parent.

SIXTEENTH: If, upon the death of an income beneficiary of any trust hereunder or of any donee of a power of appointment granted hereby, all or any part of the principal of such trust or of the property subject to such power should be included in such beneficiary's estate for purposes of computation of the Federal or state estate tax thereon, my Trustees are authorized to pay over to the personal representatives of such beneficiary or donee out of such principal without Court order such sum as such representatives may certify to be the

pro rata share of such estate taxes attributable to the inclusion of such trust principal or property subject to such power in the taxable estate of such person, provided, however, that no such payment shall be made if the Will of the beneficiary or donee shall contain a direction that all estate taxes attributable to any property included in the beneficiary's or donee's estate, whether or not passing under such Will, shall be paid out of the beneficiary's or donee's residuary estate.

Any tax assessed directly against any trust hereby created by reason of the death of any income beneficiary shall be paid out of the share of the principal thereof theretofore held for the benefit of such beneficiary prior to making any division thereof as herein provided for purposes of setting up separate shares or for distribution to remaindermen.

SEVENTEENTH: In addition to the general powers vested by law in executors and testamentary trustees, I specifically authorize and empower the Executors hereof and Trustees hereunder, whether named herein or appointed as hereinafter provided, with respect to all property at any time held by them hereunder, including property held by them as Donees of a Power in Trust pursuant to the provisions of Paragraph TWELFTH hereof, as follows:

- (a) To pay general legacies and divide or distribute my estate or the principal of any trust in kind or in money, or partly in each, or by way of undivided interests, even if shares be composed differently, and for such purposes, their valuations shall be given effect if reasonably made;
- (b) To hire and retain counsel and other agents and delegate discretionary powers to agents, remunerate them and pay their expenses;
- (c) To hold property in the name of a nominee or so that it will pass by delivery, or in their name without disclosing their fiduciary capacity or the trust;

- (d) To borrow money, either from others or from my Executors and Trustees individually, for the payment of taxes, debts or expenses or for any other purpose which in the opinion of my Executors and Trustees will facilitate the administration of my estate or the trusts, and to pledge or mortgage property as security for any such loans; and if money is borrowed from my Executors and Trustees individually, to pay interest thereon at the then prevailing rates of interest; also to continue any debt of mine and any pledge or mortgage securing it;
- (e) To abandon, in any way, property which they determine is not worth protecting or conserving;
- (f) To have complete freedom to act with respect to all property and to manage, invest, hold or retain the same even though my Executors and Trustees may have a personal interest therein or in any investment or reinvestment or the business or corporation or other entity in which all or part of my estate or any trust shall be invested or reinvested, in like manner and with like immunity from liability as if such personally interested fiduciary were a complete stranger thereto; to deal with themselves as individuals or officers, directors or employees of any corporation or other entity in which my estate or any trust may be interested, it being my intention that the usual rules prohibiting a fiduciary from dealing with itself as an individual or with respect to any matter in which it has an interest which is personal or individual shall not apply, and no liability, responsibility or accountability except for bad faith or misfeasance shall be incurred or sustained by my Executors and Trustees by reason of any alleged conflict of interests or divided loyalty or other duty;
- (g) To administer and invest separate trusts wholly or partly as one fund in which each such trust has an undivided interest.
- (h) To determine whether or to what extent receipts should be deemed income or principal, whether or to what extent expenditures should be charged against principal or income, and what other adjustments should be made between principal and income, provided that such determinations shall not conflict with well settled rules for the determination of principal and income questions;
- (i) To act, or cause any of their officers or employees to act, as officer, director, employee, agent or in any other capacity, or in two or more such capacities

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in and of any corporation or corporations or other business entities of which securities or voting power shall be held by my Executors or Trustees, and to vote stock and otherwise do whatever may be necessary so to act.

- and retain, temporarily or permanently, any kind of realty and personalty -- including real estate and interests therein, partnership interests, stocks and unsecured obligations, undivided interests, interests in investment trusts, investments in discretionary common trust funds, property which produces much, little or no income, or which is outside of my domicile or abroad -- all without diversification as to kind or amount; and to remain as or become partners in any business with respect to any part of my estate or any one or more trusts;
- (k) To continue and carry on my investment in any business, whether corporate,
 partnership or proprietary in which I may be
 interested at the time of my death, and invest
 therein additional funds out of my general
 assets or the principal of any trusts or to
 liquidate the same in whole or in part on such
 terms and at such times as they deem proper;
- (1) To sell or otherwise dispose of realty and personalty, publicly or privately, wholly or partly on credit, without Court order; to make executory contracts and grant options binding upon estate or trust assets;
- (m) To renew, assign, alter, extend, compromise, release, with or without consideration, or submit to arbitration, obligations or claims held by or asserted against my Executors or Trustees which affect estate or trust assets;
- (n) To lease, or grant options to lease, for periods to begin presently or in future, without regard to statutory restrictions on leasing and even though any such period may extend beyond the period of administration of my estate or the term of any trust; to erect or alter buildings or otherwise improve property; to demolish buildings; to make ordinary and extraordinary repairs, grant easements and charges; to make party wall agreements; to dedicate roads; to subdivide; to square lines; to partition; to give money for equality of partition; to enter into such agreements or covenants as my Executors and Trustees may deem proper relating to any such action; to insure against fire, loss or other casualties;

- (o) To exercise all conversion, subscription, voting and other rights of whatsoever nature and to grant proxies of any kind;
- At any time, to liquidate, reorganize, dissolve or otherwise terminate or change any corporation or partnership or other busi-ness entity which or shares of which are held by them, in whole or in part, and whether alone or in conjunction with others interested therein, cause a corporation or corporations to be formed with power to hold, manage, sell operate, buy, improve, lease, exchange, mortgage, partition or otherwise deal in or with real estate or personal property or both in which my estate or any trust may have an interest or interests; to convey, or cause to be conveyed, to any such corporation any such interest or interests of my estate or any trust in such manner and on such terms and for such consideration, or in exchange for stocks, bonds or other securities of any such corporation, as my Executors and Trustees shall in their judgment and discretion determine, and to reorganize, merge, consolidate or reconstitute any such corporation or corporations as my Executors and Trustees shall deem appropriate;
- (q) To take over real property or any interest therein on foreclosure or by deed in lieu of foreclosure or as a result of any other transaction; to retain and rehabilitate the same; to modify and satisfy mortgages, and otherwise to deal with the same in whatever manner my Executors and Trustees in their discretion may deem proper;
- (r) To retain as an asset of any trust, any insurance policy that I may own at the time of my death on the life of another person, or to convert such policy into another type of life insurance and retain any policy acquired as a result of such conversion; to acquire as an asset of any trust a life insurance policy on the life of any person to whom the income of such trust is payable, or on the life of any person in whom such income beneficiary has an insurable interest, from such companies and in such amounts as my Trustees deem advisable; to pay premiums on all such insurance policies from income or principal or both as my Trustees may determine, all such insurance to be payable to, and all incidents of ownership vested in, my Trustees, provided that, notwithstanding anything contained in this Will, if any person having any power over any such policy is the insured under such policy, such person shall have no power or discretion whatsoever to make any decision, or control the making of any

decision, in respect of such insurance, and all powers, authority and discretion with respect to any such insurance or policy of insurance shall be made exclusively by my corporate Trustee. Nothing herein shall be deemed to authorize or direct any act on the part of my Trustees, prohibited by any law or statute.

EIGHTEENTH: I nominate, constitute and appoint CHEMICAL BANK NEW YORK TRUST COMPANY, a New York corporation having its principal office in the City, County and State of New York, and my sons, JAMES W. GERARD II, SUMNER GERARD, JR., and CHARLES HENRY COSTER GERARD, to be Executors of this my Will. I nominate, constitute, and appoint my said corporate Executor as Trustee under Paragraph SIXTH hereof and as Co-Trustee of all other trusts under this my Will, and I nominate, constitute and appoint as Co-Trustees of all trusts other than that under Paragraph SIXTH hereof, my son, JAMES W. GERARD II, my son, SUMNER GERARD, JR., and my son, CHARLES HENRY COSTER GERARD. Any Executor or Trustee at any time acting hereunder may resign, effective upon giving written notice to his or its co-fiduciaries. If my said corporate Executor or Trustee or any successor corporate executor or trustee, wishes to resign, it shall notify such of my sons as may then be living of its desire so to do, and my then living sons are authorized and empowered, acting jointly, to designate and appoint any corporation having fiduciary powers to be successor Executor or Trustee. If a successor corporation is not designated and appointed by my said sons within sixty (60) days after mailing or delivery of such notice, the corporation then acting as Executor or Trustee hereunder may apply to any court of competent jurisdiction for the appointment of a successor. If my corporate Executor and Trustee hereinabove named fails to

qualify as Executor and Trustee, my sons then living, acting S.G.

jointly, are authorized to nominate and appoint a substitute corporate Executor and Trustee. Any notice required by the foregoing provisions shall be in writing and shall be deemed given when sent by registered mail or delivered personally. I direct that no bond shall be required of any Executor or Trustee at any time acting hereunder for the faithful performance of its duties in any jurisdiction, or if a bond in any jurisdiction may not be dispensed with by me, I direct that such bond be in the lowest possible amount and without sureties.

My corporate Executor and Trustee may act on any communication however received, and any message by telegraph, cable, telephone or otherwise purporting to be from the other co-Executors or co-Trustees at the time living may be accepted and in such case shall be conclusively presumed to be from such person and the contents of any such telegram or cable shall be receivable in evidence in any proceeding relating to the administration of my estate or any trust under this Will without additional proof. If any such communication so received is not in writing and subscribed, my corporate Executor and Trustee may, before or after acting on it, require, in its discretion, that it be confirmed by a signed writing.

If at any time there shall be more than two executors or trustees acting with respect to my estate or any trust hereby created, a majority of the executors and trustees then acting may exercise any of the powers, duties or discretions hereby conferred on my Executors and Trustees, and any act done or instrument executed by such majority shall be valid and of like effect as though done or executed by all such Executors

or Trustees, as the case may be. S.G.

I direct that my corporate Executor and Trustee receive compensation at the statutory rates it would receive if it were the sole Executor and Trustee.

NINETEENTH: Any corporation which by merger, consolidation, purchase or otherwise succeeds to substantially all the personal trust business of any then acting corporate fiduciary shall, upon such succession and without any further appointment or formalities, succeed the then acting corporate fiduciary.

TWENTIETH: No one dealing with my Executors or Trustees need inquire concerning the validity of anything that is done by it or see to the application of any money paid or property transferred to or upon the order of my Executors or Trustees.

TWENTY-FIRST: Any account rendered by my Executors or Trustees, which is approved in writing by each adult and by either parent or a guardian of each minor eligible to share in the income of my estate during administration or of the trust thereby accounted for, as the case may be, shall be binding upon all persons then or thereafter interested in my estate or such trust and shall constitute a release and discharge to my Executors and Trustees to the same extent and as fully as though the same had been settled by a court of competent jurisdiction after notice to all parties in interest.

TWENTY-SECOND: If any ancillary representative is required to be appointed in any jurisdiction in which my corporate Executor and Trustee is not qualified or able to S.G. act, I authorize and empower the Secretary of my corporate

Executor and Trustee then in office to act as ancillary representative in any jurisdiction where such appointment is required, or to designate, name and appoint any individual or corporation to act in the jurisdiction in question as such ancillary representative. I direct that no ancillary representative be required to give any bond for the faithful performance of his or its duties in such jurisdiction, or, if such a bond cannot be waived by me, that such bond be in the lowest possible amount and without sureties.

IN WITNESS WHEREOF, I have hereunto set my seal and have subscribed these presents and do publish and declare the same as an for my Last Will and Testament in the presence of the witnesses attesting the same at my request, this 30th day of July, One Thousand Nine Hundred and Sixty-five.

/s/	SUMNER GERARD	(SEAL)
SUBSCRIBED, SEALED, PUBLISHED and DECLARED by SUMNER GERARD, the Testator above named, as and for his Last Will and Testament, in our presence, and we, at his request, in his presence, and in the presence of one another, have hereunto subscribed our names as witnesses this 30th day of July, 1965.		
/s/ Anthony M. Pilaro residing	at 25 East 69 Street	
	New York, N.Y.	
/s/ Edwin M. Larkin residing	at 3215 Arlington Avenu	ıe
	Bronx, New York	
/s/ John P. Campbellresiding	at 76 Shore Road	
	Cold Spring Harbor,	L.I.

STATE OF NEW YORK) : SS. COUNTY OF NEW YORK)

The within named ANTHONY M. PILARO, EDWIN M. LARKIN and JOHN P. CAMPBELL, being duly sworn, depose and say that they witnessed the within Last Will and Testament of the within named Testator, SUMNER GERARD, and subscribed the same in his presence and at his request and in the presence of one another; that the said SUMNER GERARD, at the time of the execution of said Last Will and Testament, appeared to them to be of full age and of sound mind and memory and under no restraint; and that he signed said Last Will and Testament and declared the same to be his Last Will and Testament in their presence; and that they make this affidavit at the request of the said Testator.

/s/ Anthony M. Pilaro	
/s/ Edwin M. Larkin	
/s/ John P. Campbell	

Sworn to before me this 2nd day of August, 1965.

/s/ Mildred L. Geiger Notary Public

MILDRED L. GEIGER
Notary Public, State of New York
No. 24-1395400
Qualified in Kings County
Cert. filed with Clerk of New York County
Term Expires March 30, 1967

EXHIBIT NO. 11

SUMNER GERARD 84 WEST 83 STREET

NEW YORK 19, N. Y.

JUDSON 2-6190

Copy-

December 21, 1959

Mr. Erwin P. Frizelle Metals Bank & Trust Company Butte, Montana

Dear Mr. Frizelle:

At the same time that I wish you Sasonal Greetings, I inclose in this informal way, my personal check for \$25,000.00, to be credited to the account of the Ennis Company, though not "impressed with a trust", as the lawyers say. It is to pay for a new home on the ranch for the Superintendent, his wife and family.

Your Bank has been so cooperative that I am inclined to regard you and your associates as members of the Gerard family. Jerry, as candidate for the United States Senate, in the coming elections, will need all the cooperation that may come to him from a State that is Democratic on the ground it will be for the good of all its people. New brooms sweep clean!

With warmest regards,

Faithfully yours,

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EXHIBIT NO. 12 August 4,1961 Ohemical Bank New York Trust Company 11 Wost 51st Street New York 19, N.Y. Attn: Mr. W.E. Feely Gentlemen: This is to request that you send from the collateral of my personal loca with you, 100 shares of International Buginess Machines to the Metale Bank & Trust Company at Butte, Montana, attention of Mr. E.P. Frizelle, President. Among the securities of said personal loan there are now 1,088 shares of IEM. Extracting 100 shares would still leave with you together with the other many securities of this loan, a value sufficient to send these 100 IEM shares to the Montana bank. Due to my continued illness I am unable to go to my personal deposit box to procure other securities. My two cons. who have authority to go to that box are not in New York at present. These 100 IBM's will be held by the Montana bank as additional security for the cattle loan it has made to the Ennis Company, a beef cattle enterprise. I am assuming the stock referred to is split up into 100 chare lots with powers attached to each. I shall be grateful if you carry out the above purpose, billing me for any expense, including insurence that may be involved. Very truly yours,

marked Ty 8/7/61 3)

SUMNER GERARD B4 WEST BS STREET NEW YORK 19. N. Y.

August 4,1961

Mr. Erwin P. Frizelle Metals Bank & Trust Company . Butte, Montana

Dear Friz:

As additional security against the cattle loan your Bank made to the Ennis Company there has been added as additional securities put up by my son Jerry and his wife and also 700 shares of Standard Oil of New Jersey put up by myself. As I own a greater interest in the ranch it is now my purpose to add to the 700 oil shares so that the value of my shares will be in fairer proportion than those of Jerry and his wife.

Another objective is that after my additional shares are put up you may release and return to Jerry and his wife all or the greater portion of their securities. Then Jerry can use such returned securities in furthering some other enterprise in which he is interested.

So I am asking my Chemical Bank New York Trust Company to forward to you 100 shares of International Business Machines having a present market value of about \$48,200.00 which your Bank can hold as additional security.

I have not had the pleasure of seeing you since last summer. Now I have made arrangements to fly to the ranch this coming Tuesday the 8th of August. It would be nice to see you then togetherwith any persons you may wish to bring along.

Sincerely yours,

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EXHIBIT NO. 14GENERAL LOANS LEGGER

Special Instructions

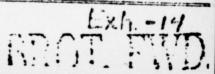
SHEET NUMBER___1_

CLASSIFICATION_A3_

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METALS BANK & TRUST COMPANY
BUTTE, MONTANA



S. COMPANY
COMMERCIAL NATIONAL BANK
MAN, MONTANA

CARA GENERAL LOANS LEDGER

Special Instructions

SHEET NUMBER 2

CLASSIFICATION. 497

DF	SCRIPTION OF NO	OTE				INT. PAID	DATE	BALANCE
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9	4 19 55	12 1 55	5.00	2,000.00			JPR 19 55	01,020.24
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3	4 22 55	12 1 55	5.00	3,150.00			WPR 22 55	84,976.24
9	6 3 55	12 1 55	5100	24,000.00			JUN 3 55	108,976.24
7	7 2 55	12 1 55	5.00				Ju 2 55	113,976.24
8	7 23 55	12 E 55	5.00			•	JUL 23 55	117,976.24
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METALS BANK & TRUST COMPANY

RÄÖT. FWD.

249a Special Instructions

CLASSIFICATION N.

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METALS BANK & TRUST COMPANY
BUTTE, MONTANA

BROT. FWD.

S-COMMETOTAL HATLONAL BANK

250a

GENERAL LOANS LEDGER .

Special Instructions

CLASSIFICATION.48.

DE	SCRIPTION OF NOTE	RATE	DEBIT .	CREDIT	INT. PAID (MEMO)	DATE	BALANCE
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9-40	10 28 58 12 3	5.0	22,5 00.00	4,000.00		OCT 2 58 OCT 2 1 58 OCT 2 8 58	171,739,57
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METALS BANK & TRUST COMPANY BUTTE, MONTANA

BROT. FWD.

COMPANY

MONTANA

251a GENERAL LOANS LEDGER

Special Instructions

CLASSIFICATION_____ 4B

3281	DESCRIPTION OF	NOTE		***************************************				TOTAL PROPERTY.
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DO NOT POST BELOW THIS LINE

METALS BANK & TRUST COMPANY BUTTE, MONTANA

GENERAL LUANS LEDGER .

252a
Special Instructions

SHEET NUMBER 1

CLASSIFICATION_4B

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METALS BANK & TRUST COMPANY

BUTTE, MONTANA

Sun Jud.

GENERAL JANS LEDGER

Special Instructions

SHEET NUMBER 2

1	- CONTRACTOR AND AND					THE PARTY IN	-	THE RESERVE OF STREET
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DO NOT POST BELOW THIS LINE ...

METALS BANK & TRUST COMPANY.

BUTTE, MONTANA

CROT. FWD.

254a GENERAL LOANS LEDGER

Special Instructions

SHEET NUMBER. 3

CLASSIFICATION____

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DO NOT POST BELOW THIS LINE

METALS BANK & TRUST COMPANY

BUTTE, MONTANA

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GENERAL LOANS LEDGER

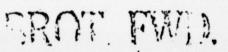
255a Special Instructions

CLASSIFICATION 4B

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DO NOT POST BELOW THIS LINE

METALS BANK & TRUST COMPANY
BUTTE, MONTANA



256a
Special Instructions SHEET NUMBER

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DO NOT POST BELOW THIS LINE

METALS BANK & TRUST COMPANY

BUTTE, MONTANA

BROT. FWD.

VIS COMPANY

O E. MAIN 709 Midland Bank Bldg.

School Billings, Montana

Special Instructions

257

SHEET NUMBER___

CLASSIFICATION_4B

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METALS BANK & TRUST COMPANY
BUTTE, MONTANA



ENNIS COMPANY

709 MIDLAND BANK BLDG. BILLINGS, MONTANA

Special Instructions

CLASSIFICATION 4B

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METALS BANK & TRUST COMPANY
BUTTE, MONTANA



ENNIS COMBANY GENERAL LOANS LEDGER

709 MIDLAND BANK BLDG. BILLINGS, MONTANA

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Special Instructions

SHEET NUMBER_ 259a

CLASSIFICATION_ 4B

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DO NOT POST BELOW THIS LINE

METALS BANK & TRUST COMPANY

BUTTE, MONTANA"

EXHIBIT NO. 16 23rd August 1961

Hr. E. P. Frizello, President, Matala Bank & Trust Co., Butte, Montana.

Doar Friz,

Thank you for your letter of August 16th. My Fether, of course, gave me a copy of his letter to you of August 4th, with which he forwarded 100 shares of International Business Machines to replace some of my collateral.

As of last Fridays quotation, the 100 I.B.M. sheres had a value of \$50,000.00. My own stock, namely, 200 shares of El Paso Natural Gas, 420 California Facking Co., 100 Panhendle Pipo Lino, 100 Ohio Cil, would have a market value as of the same date of \$37,647.00.

I would hope that these could be returned to me together with 30 shares of I.B.M. in my wife's name. This would leave collateral of 154 I.B.M. shares and 700 Standard Cil of New Jersey, having a market value of the same date of \$108,500.00, or slightly more than the evaluation contained in your letter of July 24th.

It is understood, of course, that the situation will be re-evaluated at the end of the marketing season.

You may be assured that my Father has seen your letter of July 24th, and understands the contents.

I am sorry to hear that it will not be possible for you to come down this week. Unfortunately my Father will be returning to New York on the 28th August, and I will be accompanying him.

Forry I missed you at the Bank yesterday. With kind regards, as always.

Most Sincerely,

Summer Gerard.



METALS BANK & TRUST COMPANY

ESTABLISHED ING2

BUTTE, MONTANA

261a

EXHIBIT, NO. 17

March 27, 1963

"The Richest Hill on Earth"

Mr. Sumner Gerard, Jr., President The Ennis Company Ennis, Montana

Dear Jerry:

Jere Davis told me of your call today. I am sorry I missed you as I had been expecting to sit down with you and review your loan in order to set it up properly for this year.

Perhaps it is just as well to put our figures in the form of a letter in order that you may review them at your convenience.

I suggest that we go back to the year end of 1962, at which time your loan stood at \$277,138.48, plus approximately \$13,000 in interest, or a total of \$290,000 in round figures. Advances of \$20,500 made since that time may be considered as 1963 operating advances. Our analysis of the loan and the security is as follows:

	Cattle	e Valuat	tion		
614 cows			@	215	 \$ 132,010
34 heifers (2s)				200	6,800
123 steers (ls)				175	21,525
3 steers (2s)				200	600
297 calves (mostly s	steers)			125	37,125
30 bulls				300	9,000
4 milk cows				175	700
1,105					\$ 207,760
					60%
	Loan	on Catti	le		\$124,650

think you will agree that the prices placed on the cattle are fairly high compared to oday's market.

METALS BANK & TRUST COMPANY BUTTE, MONTANA

page 2 March 27, 1963 Sumner Gerard, Jr.

262a

Marketable Collateral Valuation (3-27-63)

Shares	Company	Market	Total
440	Calif. Pack	25	11,000
250	El Paso Natural Gas	. 18	4,500
100	Pan East Pipe	73	7,300
104	Marathon Oil	49	5,096
184	I. B. M.	421	77,464
700	Standard, N. J.	63	44,100
248	Alum., Lmt.	22	5,456
300	Atlas Gen. Ind.	17	5,100
200	I. B. M.	421	84,200
			244,216

To summarize, we have the following:

Loan balance plus interest		\$ 290,000
Less loan value on cattle		125,000
To be secured by marketable collateral		\$ 165,000

Marketable collateral required on the basis of an 80% loan:

\$207,000 @ 80%

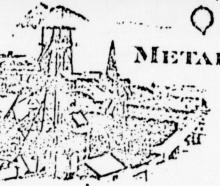
\$ 165,600.

From the above you will note that retaining \$207,000 of the marketable collateral leaves \$37,000 excess, which we are in position to release. Not knowing which stocks you might want released, we have done nothing about sending the stocks to Bozeman as you requested.

Very truly yours,

EPF:ja

E. P. Frizelle President



"The Richest Hill on Earth"

METALS BANK & TRUST COMPANY

ESTABLISHED INHE

BUTTE, MONTANA

263a

EXHIBIT NO. 18

April 8, 1963

Mr. Sumner Gerard Ennis, Montana

Dear Jerry:

It will be entirely satisfactory with us to release your stocks, other than the IBM and the Standard Oil of New Jersey. Before we send the stocks to the Security Bank in Bozeman, we would like to know whether you also wish us to send stock powers to them. I am also wondering whether this is some deal that we could have handled for you, rather than the Bozeman bank.

Best personal regards.

EPF:ja

Sincerely,

É. P. Frizelle

Aurion White

EXHIBIT NO. 19

Mr. E. P. Frizelle, President Metals Bank amilTrust Company Butte, Montana

Dear Friz:

Thanks for your note of April 8. Please be assured that my only reason for asking that they be sent to Bozeman is so that I can put them in a safety deposit box I have there. It will not be necessary to send stock powers with the securities.

This is being dictated in the airplane on my way back to New York for the second time in two weeks on a combination of corporate and personal matters. I sincerely hope that this trip will be a brief one.

Yesterday I sold, as planned, 100 cows at a net price to Ennis Company of \$222.50. These cows are less than half calved out, the rest being either late calvers or possibly cripty. These cows are by no means our best; in fact, there is some good reason for getting rid of every one of them. I think it is a reasonably good sale on the present market.

With kindest regards,

Most sincerely.

Summer Garard

SG: 11

(Dictated but not read)

DESCRIPTION DUE DAY
10.27.
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266a HEET NO .-10 SUMMER GERARD, JR ADDRESS EMILS, MONTANA EXBHIBIT NO. 120 OCCUPATION. AFFILIATED WITH AS MAKER AMOUNT OF NOTE DATE DATE DUE NOTE NO PAYMENTS 25,000.00 red22 61 173,478 6.00 DEMAND 25,000.00 COLL 19 BZMIL QUARTERLY INT 375.00 173,478 6.00 SET 21 61 25,000.00 WARTERLY INT 6.00 375.00 173,478 25,000.00 mi 13 61 6.00 QUARTERLY INT 375.00 173,748 31,500.00 6,500.00 WILB 62 EMAND 6.00 178,513 COLL CIARTERLY INT 6.00 375.00 173, 478 31.500.00 HAR 5 62 NT TO 2-12-62 39.00 178,513 6.00 QUARTERLY INT 6.00 375.00 73,478 31,500.00 MAY 25'62 QUARTERLY INT 6.00 97.50.78,513 INT TO 8-22-62 6.00 375.00 73,748 30,300.00 SEP 662 97.5078,513 6.00 1,200.00 QUARTERLY INT 30,300.00 84.27 78,513 6.00 DEC 3'62 QUARTERLY INT 6.00 375.0073,478 QUARTERLY INT 6.00 30,300.00 375.00 73,478 FEB 25'63 QUARTERLY INT 6.00 79.50 78.513 QUARTERLY INT 6.00 79.50 78.513 375.00 73,478 30,300.00 MAY 28'63 QUARTERLY INT 6.00 QUARTERLY INT 6.00 30,300.00 375.00.73,478 AUG 23'63 QUARTERLY INT 6.00 79.50 78,513 37,000.00 6,700.00 OCT 29'63 DEMAND 6.00 188.647 37,000.00 COLL NOV 25'63 QUARTERLY INT 6.00 375.00 73,478 RENEWED & INC. 6.00 100.50188,647 6,700.00 RENEWED & INC. 6.00 136.03 78,513 5,300.00 RENEWED & INC. 258.3273,478 6.00 37,500.00 25,000.00 JAN 23'64 37,500.00 DEMAND 190,137 6.00 37,500.00 COLL. MAY 4'64 QUARTERLY INT. 6.00 37,500.00 37,500.00 562.50 90,137 AUG 6'64 QUARTE LY IN .T 562.50.90,137 6.00 NOV 2'54 QUARTERLY INT. 6.00 562.50.90,137 37,500.0 FEB 4'65 QUARTERLY INT. 6.00 562.50.90,137 P10 145 37,500.00 APR 21'65 QTLY INT. 6.00 562.50 90,137 37,500.0 \$2,250 JUL 26'65 ORTLY INT 6.00 562.50190,137 53,500.0 SEP 1'65 DEMAND 16,000.00 6.00 201,279 S/A 53,500.C NUV 3'65 ORTLY INT 6.00 562.50190,137 6.00 258.67201,279 .0 16,000,00 DEC 7'65 Pro 110 2 6.00 37.500.00 (281.29 90,137 535.00

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	Metals Bank and Trust Company Butte, Montana	Ennis Company Receivables Due From Sumner Gerard, Jr.
12/31/59	\$157,749	\$19,832
12/31/60	147,080	16,714
12/31/61	179,619	23,456
12/31/62	277,138	40,405
12/31/63	300,796	65,563
12/31/64	366,774	83,426
12/31/65	363,940	58,126
12/31/66	382,940	83,537
	SERRED SUBSECTION CONTROL CONT	

Petitiones 13 Ex 131

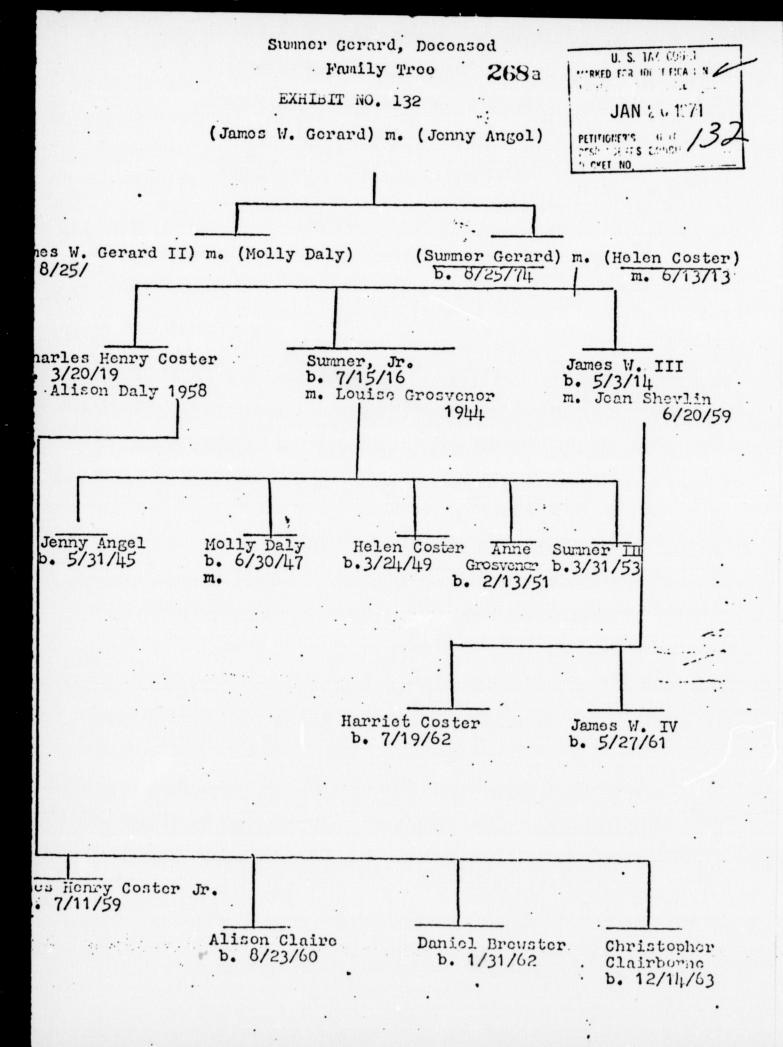


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EXHIBIT "AC"

ASSETS

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	will of Mary D. Gerard	167,000.00		
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This (1) All valuations are current or estimated market and on investments and other assets' the wast recent available valuations are used.

(2) For reflected in the above figures is a possible contingent liability estimates not to excess \$ 5,000.00.

Respondent's

EXHIBIT "AD"

Mr. Don Platten
Chemical Bank
New York Trust Company
90 Pine Street
New York, New York

Dear Don:

In accordance with our conversation
enclose herewith a certificate for seventeen sh

RECEIVED

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Mell W

In accordance with our conversation last month I enclose herewith a certificate for seventeen shares of the Aean Realty Company together with an executed assignment form. I am requesting the New York office to send you the latest statements of this company together with that of its major subsidiary Aeonitt Realty.

The estimated market value of these shares for tax purposes was about \$950,000.

It is my understanding that I will be permitted to borrow from time to time up to \$25,000 per year as required for educational purposes only. I have no immediate need for funds but thought it well to set things up now. With many thanks for your courtesy.

With kindest regards.

Moss sincerely,

Summer Chergue

SG:kg

Encl.

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AD

Hi

July 14th, 1964

Mr. Summer Gerard Ennis Montana

Dear Jerryt

Thank you for your latter of the 10th, enclosing 17 shares Ason Realty Company with an executed assignment form. I look forward to receiving the latest statements of this company and that of its major subsidiary, Asonitt Realty.

Jerry, I'm enclosing notes and purpose statements for your use, when as and if you are ready to borrow. Also enclosed is our official receipt for the stock.

With kind regards,

Sincerely,

D.C.P.

Enc.

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EXHIBIT "AF"

August 19, 1964

Mr. Donald C. Platten, Vice-President Chemical Bank New York Trust Company 20 Pine Street New York, New York REC'D LOAN DEPT.

AUG 24 19,4

MAIN OFFICE

Dear Don:

In as much as school season is about to begin and tuition payments will shortly be required, I should like to take down an initial loan of \$15,000.00 according to the arrangements which have been made.

Enclosed herewith is a note form signed in blank together with statement on purpose of loan. Perhaps you would be good enough to have the proceeds deposited in my account *007-246129 at the Rockefeller Center Branch of your bank.

With kindest regards,

Most sincerely,

Sumner Gerard, Jr.

SG/kg Encl: 2

to 11,33 (OW: 10,0)

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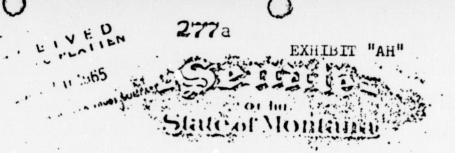
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BILL DAIR THE BURL BURL TOWARD



SENATOR SUMNER GERARD ENNIS. PUNTANA MADISON COUNTY

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Mr. Donald J. Flatten, Vice Pres. Commical bank New 1 or Trust Co. 26 Fine Street New York L., New York

Lear Don:

I was pleased to mean from John Camptell when he was last in New York that you had been sevenced to some higher hierony of the bank for which my condrat lations.

Last year I took fown only fifteen thousand dollars of the agreed open twenty-five thousand dollars permitted as a personal loan against Aeon Realty Company stock. I should like at this time to take down the tenthousand dollars on ser last year, plus fifteen thousand dollars for the current year, or a total of twenty-five thousand dollars.

Enclosed herewith is a note signed in blank, and regulation U statement, filled out with the exception of the date of the loan.

As you may have neard my father was in the hospital recently, but in his usual remarkable way, has emerged again in excellent condition, considering his years, and is back home.

I shall be tied up here with legislative duties until about the middle of March, and hope to get to New York about that time.

With kindest rewards,

Most fincerely

Summer Gerard

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EXHIBIT "AI"

8/7/101

SUMNER GURARD 54 WEST BO STREET HLW YORK 10, H. Y. JUDEC 4 2-0103

11. S. T.X bank CONTROLLEGATION TO THE PROPERTY OF THE PROPERT ACHIETO III ETTERE -- / JAN 26 1971 PETITIONER'S EXHIBIT .. RESPONDENT'S TANKELL & DOCKET NO.

August 4,1961

Erwin P. Frizelle als Bank & Trust Company te, Montana

r Friz:

As additional security against the cattle loan ar Bank made to the Ennis Company there has been added as adtional securities put up by my son Jerry and his wife and also o shares of Standard Oil of New Jersey put up by myself. As I a greater interest in the ranch it is now my purpose to add to e 700 oil shares so that the value of my shares will be in fairer oportion then those of Jerry and his wife.

Another objective is that after my additional ares are put up you may release and return to Jerry and his wife I or the greater portion of their securities. Then Jerry can use ach returned securities in furthering some other enterprise in nich he is interested.

So I am asking my Chemical Bank New York Trust ompany to forward to you 100 shares of International Euciness achines having a present market value of about \$48,200.00 which our Bank can hold as additional security.

I have not had the pleasure of sceing you since ast summer. Now I have made arrangements to fly to the ranch this oming Tuesday the Eth of August. It would be nice to see you then egetherwith any persons you may wish to bring along.

Sincerely yours,

279a EXHIBIT "AJ" In Capage Residence: 27 Most 73rd Street New York 21, 11. Y. Novemb er 4, 1933 Dictated but not read Dr. John M. McLeco 525 Rust 60th Street New York 21, N. Y. Dear Dr. Liellean; I have an appointment to see you at the Mospital this coming. Friday morning. You will determine whether or not an operation is necessary and if my general handle can withstand it. So to save them tot ine supply you with a consider of my into. I am 87 years old give or take a year. That needs I was born when U.S. Grant was President. I have presuged two in for specifiers, one at 173 Marier I Contag for a prostate exemp fine I believe was in 1933. The second one was in the New York Respital in 1959 for gall binder trouble. These reserves many ha at your disposal- Its. Therefore Oppos to may family physician. For a while after this accoud experience my hally was the r. pover; included the drainings tubes were reserved. For the last year or two my unlarry modularry has gens on the blich. I taken it is the result of overtemporing with my intesting tabes. Every morning before 2 and 4 elebets there is an intense desire to unfor to so I stand up beside my had and acok reliaf hato a glass board. Prestration! So I leave the fight on and out a derivertically made biscult and detail water with each place because my uppers are in the bathacom. Finally, I suffer from employeems to each an entent that the merco has to help his to go to the bethevoir and afterwards go to the front store where I sit in one chay chair before the TV and the radie. How, to corne to the eyes. Dawing most of the night the cycleste are printed. That discenders disappears after I have dream est considerable mesous. Could is be that the mesons proposes on the eyeball, because later in the monetage there is no even trackle at all? To go to the heartest is an extent and required the him I got I has a inclined amme who has attended to me for several yeave. Her names to Mira. Mettle Sternfeld. Sincersly yours, P.C. I that: the employment is the population of the could be supplyed and and a of mention of the free on electrons. Ly time i more over-eight detical Letter constrate has to the firm to coling ...

EXHIBIT "AK"

SUMMER GERARD 27 FAST VORO STREET NEW YORK 31, N. Y.

September 26, 1963

Dear Doctor Oppel:

I am still hanging on but my condition is now such that I fear it requires the expert medical know-how of your good celf. My internal pipes are on the blink and the ability to urinate at night is becoming more and explain this.

Last night I took one of your cute tiny sleeping pills and slumbered soundly until about 2 A.M.
I stood up at the side of my bed resting one hand on the
table and the other hand holding a crystal jar. No
leakage. Then I popud back into bed and endured tremendans discomfort until the very early marning when I
managed to dribble a bit.

When the trained nurse comes about helf past eight in the morning she helps me into the bathroom and there I manage a fair lookage and my day begins when I get into a chair in the front room and then I am hardly bethered a bit until evening comes which I contemplate with apprehension.

So at your convenience, after thinking over the contents of this note, have your accretary advise me as to when you can come up. It might well be you will think it good to have X-Rays. A major operation at my age is risky.

Sincerely yours,

Im. Theodore Oppel New York City, N.Y. Mysima Grand

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57 T. C. No. 79

UNITED STATES TAX COURT

ESTATE OF SUMNER GERARD, CHEMICAL BANK NEW YORK TRUST COMPANY, C. H. COSTER GERARD, SUMNER GERARD, JR., JAMES W. GERARD, II, Executors, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 5573-69.

Filed March 13, 1972.

Held: The transfer of 51 shares of stock of Aeon Realty Co. by the decedent, Sumner Gerard, to his sons on Jan. 2, 1964, followed by his death on March 10, 1966, constituted a gift made in "contemplation of death" within the meaning of sec. 2035. I.R.C. 1954.

John P. Campbell, Robert D. Whoriskey, and Anthony J. Leitner, for the petitioner.

Agatha L. Vorsanger, for the respondent.

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QUEALY, Judge: The respondent determined a deficiency in the Federal estate tax of the Estate of Sumner Gerard, deceased, in the amount of \$4,111,906.38. Except for certain gifts by the decedent, the various issues have been disposed of by agreement of the parties. Consequently, the only issue remaining for decision is whether the transfer by the decedent on January 2, 1964 of 51 shares of stock in Aeon Realty Co., distributed in equal portions to his three sons, was made in contemplation of death within the meaning of section 2035.

FINDINGS OF FACT

Some of the facts have been stipulated. The stipulation of facts and exhibits attached thereto are incorporated herein by this reference.

Sumner Gerard (hereinafter referred to as "the decedent") was born on August 25, 1874, and died on March 10, 1966. The executors of his estate are the three sons of the decedent, C. H. Coster Gerard, Sumner Gerard, Jr., and James W. Gerard, II, and the Chemical Bank New York Trust Co. (hereinafter referred to as

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All statutory references are to the Internal Revenue Code of 1954, unless otherwise indicated.

"Chemical Bank"). The Federal estate tax return was filed with the district director of internal revenue, Manhattan, New York.

At the time of the filing of the petition herein, the legal residences of C. H. Coster Gerard, Sumner Gerard, Jr., and James W. Gerard, II, were New York, New York, Princeton, New Jersey, and Bay Harbor, Maine, respectively. The principal place of business of Chemical Bank was New York, New York.

Following World War II, Sumner Gerard, Jr., desired to move to the western region of the United States. He began studying the ranching business, and in 1947 he toured several western states. On that tour, he located a ranch in Ennis, Montana. He made a recommendation to his father, the decedent, that said parent purchase the ranch.

In 1948, the decedent purchased all the stock of the Ennis Co., the corporation that owned the ranch. Summer Gerard, Jr., and his family moved onto the ranch at that time, and continued to reside there at all times material hereto.

In 1954, the Ennis Co. was liquidated and a partnership was formed. On December 31, 1958, the Ennis Co.
(hereinafter referred to as "Ennis") was reincorporated
and the assets of the partnership, consisting principally
of the ranch, were transferred to the corporation. At
that time, Ennis qualified and elected to be taxed as a
"small business corporation" within the provisions of
subchapter "S" of the Internal Revenue Code of 1954. It
continued to be taxed in this manner through he date of
the decedent's death.

Upon its reincorporation, the decedent received 2,680 shares of the outstanding capital stock of Ennis, which he held through the date of the decedent's death. The remaining 1,320 shares of stock were issued to and held by Sumner Gerard, Jr., and his wife.

As an asset of Ennis, the ranch was run as a live-stock operation. The cattle (and some horses) were either bought or bred and then fed and sold as either calves, yearlings, or 2-year olds, depending upon the state of the market. Depreciation was taken on the purchased animals.

During the calendar years 1959 - 1963, the annual operating statements of Ennis reported net operating losses in the following amounts:

Year	Loss	
1959	\$ 72,182.02	•
1960	14,582.24	
1961	40,705.99	
1962	46,966.50	
1963	121,651.01	

In addition, during the same calendar years, the corporate income tax returns for Ennis reported losses in the following amounts:

Year	Loss
1959	\$ 72,182.02
1960	4,272.14
1961	28,310.09
1962	32,317.47
1963	121,651.01

The difference between the net operating losses of Ennis and the losses reported on the corporate income tax returns for the calendar years 1960, 1961, and 1962 is attributable to the income received by Ennis in those years and reported and labeled as "OTHER INCOME" on its annual operating statements. This income included gain realized by Ennis from the sale of another ranch and reported by it on the installment basis as allowed within the provisions of sec. 453 and the receipt of interest attributable to a certain contract not material to this case. There was also a loss reported by Ennis in 1962 attributable to a well drilling operation.

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These operating and income statements, however, do not reflect the inventory of cattle and other animals unsold and present on the ranch at the end of each calendar year. Since Ennis was a subchapter "S" corporation, the decedent and Sumner Gerard, Jr., were each allowed to reflect portions of the losses of Ennis on their respective Federal income tax returns for these years.

Ennis borrowed funds on a continuing basis from the Metals Bank and Trust Co. of Butte, Montana (hereinafter referred to as "Metals Bank"). At the end of each of the calendar years 1959 - 1963, the loan account of Ennis with Metals Bank showed balances in the following amounts:

Year	Amount	
1959	\$157,749.04	
1960	147,079.85	
1961	179,619.11	
1962	277,138.48	
1963	300,769.04	

The loans by Metals Bank to Ennis were secured by the cattle of Ennis, and by marketable securities owned by the decedent and by Sumner Gerard, Jr., and his wife. In 1961, the decedent pledged 700 shares of stock of Standard Oil of New Jersey to Metals Bank on behalf of Ennis. At that time, the decedent stated by letter that

an objective in making such pledge was to permit the bank to release "all or the greater portion of [Sumner Gerard, Jr.'s] securities" that had been pledged to Metals Bank on behalf of Ennis, so that he could "use such returned securities in furthering some other enterprise in which he is interested." In March 1963, the decedent pledged 200 shares of IBM stock to Metals Bank as additional security for the loans.

As of March 27, 1963, Metals Bank advised Sumner Gerard, Jr., that the marketable securities held by it were in excess of the collateral required and offered to release to Sumner Gerard, Jr., securities valued at \$37,000. It did release such securities to Sumner Gerard, Jr., later in that year. After the release, these securities were kept in a safe deposit box.

The loss reported by Ennis on its operating and income statements for the calendar years 1959 - 1963 included interest payments that Ennis was required to make on outstanding bank loans in the following amounts:

Year	Interest Expense
1959	\$14,251.52
1960	11,608.50
1961	17,120.67
1962	17,304.91
1963	26,833.24

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In 1961, Sumner Gerard, Jr., paid \$25,000 for a 50 percent interest in the Yellowstone Feed and Cattle Co. (hereinafter referred to as "Yellowstone"), located in Billings, Montana. The remaining stock of Yellowstone was received by Marshall Young (hereinafter referred to as "Mr. Young") and his wife, in exchange for a lease-hold interest valued at \$25,000 on the minutes books of Yellowstone. Yellowstone, a Montana corporation, operated a livestock feeding business. It purchased cattle on credit, fed them, and subsequently sold them.

In order to finance this business, Yellowstone arranged a revolving line of credit with the First National Bank and Trust Co. (hereinafter referred to as the "First National Bank"). In establishing this arrangement, First National Bank required personal guarantees of Yellowstone's obligation by both Sumner Gerard, Jr., and Mr. Young up to \$200,000 respectively.

In 1961 and 1962, Yellowstone reported small profits on its net operating statements. However, in 1963, the company reported a net operating loss of \$89,062.29. A factor in this reversal was the fall in the price of "fat" cattle in the open market during that year.

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In the terminology of the business, "fat" cattle has reference to cattle that have been fed so as to be ready for sale on the market.

In order to obtain financing to continue its operations, Yellowstone liquidated some of its inventory and increased its open market indebtedness for feed and supplies. In addition, in 1963, Sumner Gerald, Jr., contributed additional funds to the capital of Yellowstone in the total amount of \$51,000.

Sometime after becoming a resident of Montana, Sumner Gerard, Jr., became active in Montana state politics. He won election to the Montana State Legislature in 1954.

Thereafter, beginning in 1955, he served three successive 2-year terms in the House, serving in the 1959 session as its minority leader. In 1960, he waged an unsuccessful campaign for the Republican nomination from Montana to the United States Senate. He estimated his personal cost of this campaign at \$20,000. In 1961, he was elected to the Montana State Senate. He served two 4-year terms in the Senate, and in 1964 served as its minority leader.

The decedent took an interest in his son's political career. He made modest contributions to his son's campaign for the United States Senate, to various congressional candidates suggested by his son, and to the Montana Republican Party.

Sumner Gerard, Jr., has five children. They are Jenny, born in 1945; Molly, born in 1947; Helen, born in 1949; Anne, born in 1951; Sumner, III, born in 1953. As his children grew older, Sumner Gerard, Jr., incurred increasing expenses in providing for their education. During the calendar years 1962 - 1964, he incurred such expenses in the following amounts:

Year	Annie Wright Seminary	Vassar College	Foxcroft School	Total
1962	\$10,279.75			
1963 1964	11,070.60 9,369.25	\$1,700.00		\$10,279.75 12,770.60
	7,309.25	2,866.50	\$1,930.62	14,166.37

During the calendar years 1959 - 1963, Sumner Gerard, Jr., reported income on his Federal income tax returns in the following amounts:

<u>Year</u>	Salary	Dividends	Interest	Net Capital Gains (losses) Before 5 percent Deduction	0
1960 1961 1962 1963	\$1,400 5,489 5,403 8,399 1,874	\$12,821 12,604 11,308 13,471 14,139	\$5,285 2,854 5,387 7,428 9,078	\$43,694 1,117 (3,341) (18,744) 3,366	\$10,812 1,078

The amounts reported on these returns do not appear consistent with certain stipulations of fact. However, since both parties have agreed that the above-stated figures be included as a finding of fact, we will accept them.

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In addition, during the calendar years 1959 - 1963, Summer Gerard, Jr., as a legatee of the Estate of Mary D. Gerard, received distributions of securities in the following amounts:

Year	Shares	Subject	Total Value Credited
1961	448	Aluminum, Ltd.	\$11,984
	248	Creole Petroleum	9,982
	644	Crystal Oil	4,628
	48	Kennecott Copper	3,891
	248	Texas Utilities	24,676

He also owned a considerable amount of other marketable securities during these years.

During the calendar years 1959 - 1963, Sumner Gerard, Jr., and his family occupied the residence on the Ennis ranch without the payment of any rent. The ranch employees performed services for them for which he incurred no personal expense. Ennis owned an airplane which was available for his personal use.

During the calendar years 1960 - 1963, Sumner Gerard, Jr., was forced to borrow funds in order to defray his expenditures. He borrowed such funds from Ennis on a continuing basis. The year-end balances of his loan account with Ennis in the above-stated years was as follows:

Year			Balance
1960			\$16,713.88
1961			23,455.74
1962	•	 + 1	40,405.00
1963			65,563.50

In addition, Sumner Gerard, Jr., borrowed funds from other sources during these years. He pledged most of his marketable securities to secure these loans. As of December 31, 1963, he had outstanding loans amounting to \$167,563 as follows:

Source	Amounts	
First National Bank and Trust Co., Billings Midland Bank, Billings Chemical Bank New York Trust Co. Ennis Co.	\$ 45,000 37,000 20,000 65,563	
Total Loans Outstanding	\$167,563	

Mrs. Sumner Gerard, Jr., had received approximately
30 shares of IBM stock from her parents, which by 1963
had increased to 54 shares as a result of stock dividends.
As of the end of 1963, these shares were pledged with
Metals Bank on behalf of Ennis in securing loans.

Prior to and during 1963, petitioner discussed his financial problems with the decedent.

During 1963, Mr. Hugh V. Galusha (hereinafter referred to as "Mr. Galusha"), a financial adviser of Ennis, and a close friend of Sumner Gerard, Jr., and of the decedent, visited decedent several times at his home in New York City.

During these visits, decedent expressed to Mr. Galusha concern over the financial condition of Sumner Gerard, Jr. The decedent was told by Mr. Galusha that the capacity of Ennis to support additional loans "had been extinguished." Mr. Galusha suggested to decedent that Sumner Gerard, Jr., needed a new "transfusion of capital."

Sometime during 1963, after receiving Mr. Galusha's advice, the decedent told Mr. Galusha that he was going to transfer to Sumner Gerard, Jr., shares of stock in Aeon Realty Co. (hereinafter referred to as "Aeon"). Aeon was a New York corporation which had outstanding 108 shares of stock. Aeon held a number of properties in Manhattan, along with other real estate in the surrounding areas. At this time, the decedent owned all of the stock of Aeon. Decedent also indicated that he would make similar, equalizing transfers to his other two sons, Coster and James.

In making such transfer of stock, decedent indicated concern with payment of the gift taxes accruing from the transfer, which he was informed would be approximately one million dollars. He eventually raised the money to pay such taxes by borrowing the funds from Chemical Bank, pledging certain shares of IBM stock as collateral.

On January 2, 1964, decedent gave each of his sons 17 shares of Aeon stock. Thereafter, decedent continued to own the remaining 57 shares of Aeon stock until his death.

During the fall of 1963, Sumner Gerard, Jr., through his attorney, contacted Chemical Bank as to whether said bank would make loans to petitioner for educational purposes against a note secured by certain stock of Aeon. Chemical Bank did not consider the stock of Aeon to be a marketable security. However, Chemical Bank was familiar with some of the properties owned by Aeon, as well as both Sumner Gerard, Jr., and the decedent. For purposes of collateral, Chemical Bank placed a valuation of \$500,000 on the 17 shares of Aeon stock to be given to Sumner Gerard, Jr. The decedent was a continuing customer of said bank, and the bank therefore agreed to make loans up to at least \$200,000 against such stock.

On July 10, 1964, Sumner Gerard, Jr., forwarded the Aeon stock he had received from the decedent to Chemical Bank. In a letter sent to Chemical Bank at that time, Sumner Gerard, Jr., advised that the stock had a market value of \$950,000 for "tax purposes." He also advised

that he had "no immediate need for funds * * *." However, beginning shortly thereafter, Sumner Gerard, Jr.,
did borrow funds against this collateral, and he continued to borrow for some time thereafter on a periodic
basis. The loan never exceeded the total amount of
\$70,000.

At the time he made the gift of the Aeon stock, the decedent was 89 years of age. In 1959, he had suffered a gall bladder attack which required two operations. He suffered from emphysema and chronic bronchitis, an illness which caused the decedent to cough and to experience shortness of breath. He also had suffered periodically since 1959 from a prostatic infection, which affected his kidney and bladder, interfored with the passing of urine and sometimes caused a fever. In addition, he suffered from cataracts, which hampered his vision and caused him pain. None of the above illnesses were such that they would cause decedent's death within a predictable period of time; however, after 1961, the emphysema forced the decedent to be confined to his home. During the period 1960 - 1963, the decedent had a fulltime day nurse at his house. At times, he required help in moving from room to room.

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In May 1962, the decedent expressed fear to his physician that he was going to have a stroke.

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During 1963, the decedent developed adominal pains and at this time he expressed fear to his physician that he might be suffering from cancer. However, in May 1933, he was x-rayed, and the x-rays proved negative, i.e., they showed that he was not suffering from cancer in the abdominal region of his body.

On September 26, 1963, the decedent wrote to his family physician that "I am still hanging on but my condition is now such that I fear it requires the expert medical know-how of your good self."

On November 4, 1963, the decedent wrote to another doctor:

I am 87 years old give or take a 1 ...

* * * I have undergone two major operations,

* * *. For the last year or two my urinary
machinery has gone on the blink. * * *

Finally, I suffer from emphysema to such an extent that the nurse has to help me to go to the bathroom and afterwards go to the front room where I sit in an easy chair before the TV and the radio.

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In 1966, the decedent was admitted into a hospital with intestinal obstructions, and died of an intestinal hemorrhage on March 10, 1966.

The decedent's physician testified that, during his treatments of the decedent, the decedent never showed any signs of senility.

Prior to the gifts of the Aeon stock on January 2, 1964, the decedent made no taxable gifts, other than certain gifts in trust for his three sons, made in 1935. During his lifetime, the decedent personally retained control over the majority of his assets and all of his corporations.

For each of several years prior to his death, the decedent customarily gave each of his sons a check in the amount of \$25 at Christmas. He also gave yearly gifts of approximately \$1,500 to each of his grandchildren.

On April 27, 1964, the decedent gave to each of his sons rights to certain Alabama mineral interests. The gift received by each son was valued at \$6,883.33.

On August 27, 1965, the decedent gave to each of his sons one-third of his interest in the Texas property of the Estate of Mary Gerard. The gift received by each son was valued at \$21,987.33.

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On his notice of deficiency, respondent determined that the 51 shares of Aeon stock given by decedent to his sons on January 2, 1964, were includable in the gross estate of the decedent pursuant to section 2035, at a total value of \$3,276,232.35. The total value of the Aeon stock at date of death has now been stipulated by the parties to be \$2,090,796, or \$40,996 per share.

ULTIMATE FINDING OF FACT

The transfer of 51 shares of Aeon stock by the decedent to his sons on January 2, 1964, followed by his death within 3 years of such transfer, constituted a gift made in "contemplation of death" within the meaning of section 2035.

OPINION

The decedent was the father of three sons, C. H. Coster Gerard, James W. Gerard, II, and Sumner Gerard, Jr. On January 2, 1964, at the age of 89, the decedent gave to each of his sons 17 shares of Aeon stock, a total disposition of 51 shares. After this gift, the decedent continued as owner of the remaining 57 shares of Aeon stock.

The petitioners, as executors of the Estate of Sumner Gerard, did not elect the alternate valuation date provided for in sec. 2032.

The decedent died on March 10, 1966. The total date of death value of 51 shares of Aeon stock was \$2,090,796.

The single issue presented for decision in this case is whether the above transfer by the deceder of Aeon stock was made in contemplation of death within the meaning of section 2035. Section 2035 provides that the value of the gross estate shall include the value of 11 property transferred by a decedent in contemplation of death. It further creates a rebuttable presumption that any transfer, regardless of its size in proportion to the total amount of the gross estate, made by a decedent within 3 years preceding the data of his death is a transfer made in contemplation of death.

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SEC. 2025. TRANSACTIONS IN CONTEMPLATION OF DEATH.

a) General Rule. -- The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, in contemplation of his death.

⁻continued-

The presumption is one of law, rather than fact.

As such, it is not evidence in and of itself. Gillette's Estate v. Commissioner, 182 F. 2d 1010 (C.A. 9, 1950);

Hemphill Schools, Inc. v. Commissioner, 137 F. 2d 961 (C.A. 9, 1943). However, the estate or party challenging the determination of the commissioner must not only come forward with evidence that the gift is not made by the decedent in contemplation of death, Flannery v. Willcuts, 25 F. 2d 951 (C.A. 8, 1928), but must also carry the burden of proof. McCaughn v. Real Estate Land Title & Trust Co., 297 U.S. 606 (1936); Reeves' Estate v. Commissioner, 180 F. 2d 229 (C.A. 2, 1950), certiorari denied 340 U.S. 813 (1950); O'Neal's Estate v. Commissioner,

Footnote 6--continued.

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⁽b) Application of General Rule. -- If the decedent within a period of 3 years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a general power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section and sections 2038 and 2041 (relating to revocable transfers and powers of appointment); but no such transfer, relinquishment, exercise, or release made before such 3-year period shall be treated as having been made in contemplation of death.

170 F. 2d 217 (C.A. 5, 1948); <u>Humphrey's Estate v. Commissioner</u>, 162 F. 2d 1 (C.A. 5, 1947), certiorari denied 332 U.S. 817 (1947); <u>First Trust & Deposit Co. v. Shaughnessy</u>, 134 F. 2d 940 (C.A. 2, 1943), certiorari denied 320 U.S. 744 (1943); <u>Oliver v. Bell</u>, 103 F. 2d 760 (C.A. 3, 1939); <u>Estate of Carol C. Lynch</u>, 35 T.C. 142 (1960).

The phrase "contemplation of death" has been defined by the Supreme Court in <u>United States</u> v. <u>Wells</u>, 283 U.S. 102 (1931), wherein the Court stated:

The words "in contemplation of death" mean that the thought of death is the impelling cause of the transfer, and while the belief in the imminence of death may afford convincing evidence, the statute is not to be limited, and its purpose thwarted, by a rule of construction which in place of contemplation of death makes the final criterion to be an apprehension that death is "near at hand."

Thus, "[d]eath must be 'contemplated,' that is, the motive which induces the transfer must be of the sort which leads to testamentary disposition." <u>United States v. Wells, supra.</u> Where this motive, rather than a purpose associated with life, is the dominant reason for the transfer, the gift is in contemplation of death within the meaning of the statute, even if it is not made on account of the thought of imminent death. <u>United States v. Wells, supra.</u>

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The test of inclusion under section 2035 is based on a determination as to the dominant motive which was the "impelling cause" of the transfer. The decision in any given case is a question of fact relating to the decedent's state of mind at the time of the transfer.

In turn, this state of mind is to be determined from a consideration of all facts and circumstances present in a given case. United States v. Wells, supra; Estate of Verne C. Hunt, 14 T.C. 1182 (1950); Allen v. Trust Co. of Georgia, 326 U.S. 630 (1946); In re Kroger's Estate, 145 F. 2d 901 (C.A. 6, 1944), certiorari denied 324 U.S. 866 (1945).

In Estate of Oliver Johnson, 10 T.C. 680 (1948), this Court stated that among the factors to be considered in determining the dominant motive of a decedent in making an inter vivos transfer of property are:

(a) The age of the decedent at the time the transfers were made; (b) the decedent's health, as he knew it, at or before the time of the transfers; (c) the interval between the transfers and the decedent's death; (d) the amount of the property transferred in proportion to the amount of property retained; (e) the nature and disposition of the decedent, e.g., whether cheerful or gloomy, sanguine or morbid, optimistic or pessimistic; (f) the existence of a general testamentary scheme of which the transfers were a part; (g) the relationship of

the donee or donees to the decedent, i.e., whether they were the natural objects of his bounty; (h) the existence of a long established gift-making policy on the part of decedent; (i) the existence of a desire on the part of the decedent to escape the burden of managing property by transferring the property to others; (j) the existence of a desire on the part of the decedent to vicariously enjoy the enjoyment by the donees of the property transferred; and (k) the existence of the desire by the decedent of avoiding estate taxes by means of making inter vivos transfers of property. * * *

The petitioners argue that motives associated with life were the dominant reasons for the transfers in question. They argue that the decedent's predominant motive was to assist his son, Sumner Gerard, Jr., who was burdened with substantial indebtedness and a serious financial situation, and that the equalizing transfers to his other sons were made out of a sense of fairness and in order to preserve family harmony. The petitioners contend that the gift in question was to enable Sumner Gerard, Jr., to secure his existing loans and to be used as collateral to obtain additional loans. From this,

It is noted that this loan was sought by Sumner Gerard, Jr. (and was granted by Chemical Bank) for "educational purposes." Chemical Bank was willing to loan him approximately \$25,000 per year for such purposes. The total amount ultimately borrowed by Sumner Gerard, Jr., with respect to said loan never exceeded \$70,000.

they argue that the gifts by the decedent to his sons were not made in contemplation of death.

A decedept's desire to provide financial assistance for one or more of his offspring is a motive which has been clearly recognized as a valid basis for making a transfer not in "contemplation of death." Estate of Lillie G. Hutchinson, 20 T.C. 749 (1953); Estate of C. Dudley Wilson, 13 T.C. 869 (1949); Estate of Fletcher E. Awrey, 5 T.C. 222 (1945), acq. 1945-1 C.B. 1; Commercial National Bank, 36 B.T.A. 239 (1937), acq. 1938-1 C.B. 6. It is also clear that a decedent's intent to be fair to his other offspring and to maintain family harmony by giving equal gifts to all his children has also been considered to be a motive associated with life. Estate of John Moir, 47 B.T.A. 765 (1942); Estate of N. C. Foster, 25 B.T.A. 414 (1932). See also Estate of Carol Lynch, supra; Taylor v. United States, __ F. Supp. ___, (N.D. Cal. 1970).

However, these factors alone are not decisive. Estate of Oliver Johnson, supra. Rather, they must be considered along with all of the other facts and circumstances present

in a given case. <u>United States</u> v. <u>Wells</u>, <u>supra</u>; <u>Allen</u> v. <u>Trust Co. of Georgia</u>, <u>supra</u>. In the context of this case we find them to be of little probative value in determining the decedent's motive for the transfer of Aeon stock to his sons.

At the time of the transfers in question, the decedent was almost 90 years of age. He was not in good health. Approximately 4 years previous, at age 85, he had undergone two debilitating operations. At the time of the making of the gifts at issue, he suffered from emphysema, chronic bronchitis, and a prostate condition that affected his kidneys and bladder, caused frequent fevers, and otherwise rendered him uncomfortable. He also had cateracts in his eyes which seriously impaired his vision and caused him pain. He was confined to his house and required the care of a full-time day nurse. At times, he needed help in moving from room to room.

The evidence clearly shows that the decedent was aware of his physical condition. Moreover, petitioner also indicated fear that new symptoms that he was experiencing were indicative of even more serious illness.

Age and health, while not decisive, must be given considerable weight in attempting to ascertain the dominant

motive for a decedent's transfer of property within the 3-year period prior to his death. United States v.

Wells, supra; Burns v. Commissioner, 177 F. 2d 739

(C.A. 5, 1949), affirming a Memorandum Opinion of this Court; McClure v. Commissioner, 56 F. 2d 548 (C.A. 5, 1932); Estate of Oliver Johnson, supra. Here the age of the decedent, the state of his health, and the fact that he was fearful that he might be facing a terminal illness, make it inconceivable that the transfers were not induced by the realization that death was near at hand. See Liebmann v. Hassett, 50 F. Supp. 537 (D. Mass. 1943), reversed in parts on other grounds, 148 F. 2d 247 (C.A. 1, 1945).

This conclusion is further strengthened by the fact that the decedent had no history of prior gifts. Indeed, the evidence clearly shows that, with respect to his sons, the decedent was frugal. The decedent's gifts of Aeon stock to each of his sons in 1964 in excess of \$2,000,000 had no counterpart in prior years. The donees of the transfers in question were the decedent's three sons, the natural objects of his bounty who, except for a few small bequests, were the sole legatees under his

will. Coming at a time when the decedent was approaching the age of 90 years, such gifts are a strong indication of testamentary intent on the part of the decedent. See Estate of Oliver Johnson, supra; English v. Jnited States, 270 F. 2d 876 (C.A. 7, 1959).

Subsequent to the gifts in issue, the decedent, on April 27, 1964, gave to each of his sons certain mineral interests in Alabama, each valued at \$6,883.33, and also to each cash in the amount of \$3,025. On August 27, 1965, he gave to each of them one-third of his interest in the Texas property of the estate of his wife, each one-third interest being valued at \$21,987.33. In both instances, as well as with the transfers in question, the gifts were in the same proportion as the subsequent division of the estate provided for in his will. This entire pattern of

In his will, the decedent provided cash payments to persons other than his sons in the total amount of \$24,000. He also provided a trust to be used for the benefit of his butler and his butler's wife in the total amount of \$100,000. In addition, he provided for a charitable contribution to the Sumner Gerard Foundation, the total amount of such contribution to be equal to 10 percent of his gross estate as valued for Federal estate tax purposes. Other than these bequests, his sole legatees in an estate valued at several million dollars were his sons and/or their wives.

activity and the identical proportionality in each instance also indicates that the transfers were testamentary in nature. Cf. The Cleveland Trust Co. v United States, 421 F. 2d 475 (C.A. 6, 1970). See also Oliver v. Bell, supra; Estate of Robert W. Hite, 3r., 49 T.C. 580 (1968); Estate of Mabel L. Ridgely v. United States, 180 Ct. Cl. 1220 (1967).

While Sumner Gerard, Jr., might well have been in need of financial assistance, the stock of Aeon was not the most suitable vehicle for providing such assistance. It was stock of a closely held corporation. As such, it was difficult to value, had limited marketability, and, as a consequence, was not the most suitable collateral for additional loans or as security for existing loans. On the other hand, the decedent controlled large amounts of marketable securities which were far more suitable for this purpose.

Furthermore, the Aeon stock was the asset which would be the most desirable for the decedent to have removed from his estate in order to avoid the estate tax problems generally associated with this type of asset. As discussed above, the Aeon stock was the stock of a closely held corporation, and would not be readily marketable.

These factors could present valuation problems for purposes of computing the estate tax and would render the stock difficult to sell for purposes of obtaining funds to pay the estate tax once it was determined.

By reason of the decedent's age, the condition of his health, and the testamentary nature of the gifts in question, we are impelled to find that the transfers of the Aeon stock by the decedent were, in fact, gifts in contemplation of death within the meaning of section 2035.

Decision will be entered under Rule 50.

310a

DECISION

UNITED STATES TAX COURT

ESTATE OF SUMNER GERARD, CHEMICAL BANK NEW) YORK TRUST COMPANY, C. H. COSTER GERARD,) SUMNER GERARD, JR., JAMES W. GERARD, II,) EXECUTORS,	
Petitioners,	
v. }	Docket No. 5573-69
COMMISSIONER OF INTERNAL REVENUE, .)	
Respondent.)	

DECISION

Pursuant to the opinion of the Court filed March 13, 1972, and incorporating herein the facts recited in the respondent's computation as the landings of the Court, it is...

RDERED and DECIDED: That there is a deficiency in estate tax due from the petitioners in the amount of \$832,978.93.

(signed) William H. Quealy

Judge.

Entered:

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It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

Robert D. Whish

ROBERT D. WHORISKEY Counsel for Petitioners 100 Wall Street New York, New York 10005 1. No. 212-248-8111

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MEADE WHITAKER Chief Counsel .Internal Revenue Service.

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THEODORE E. DAVIS Assistant Regional Counsel 26 Federal Plaza, 12th F1. New York, New York 10007 Tel. No. 212-264-0270

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The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, shall not apply to the transfer of the net estate of any decedent who has died or may die while serving in the military or naval forces of the United States in the present war or from injuries received or disease contracted while in such service, and any such tax collected upon such transfer shall be refunded to the executor.

Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all

property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, courtesy, or

by virtue of a statute creating an estate in lieu of dower or courtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fine sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale

for a fair consideration in money or money's worth; and

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.
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amended effective: Amendments: P. L. 87-834, 1 18(a)(2)

P. L. 87-834, # 18(a)(2);

Amended Code Sec. 2033 by deleting "(except real property situated outside of

· United States)". Effective with respect to estates of decedents dying after October 16. 1962, subject to the qualifications set forth in § 18(b). See amendment note for Code Sec. 2031(a).

[Sec. 2034]

SEC. 2034. DOWER OR CURTESY INTERESTS.

The value of the gross estate shall include the value of all property to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy

Source: Sec. 811(b), 1939 Code, su ... ntially unchanged.

Sec. as Amendments: amended effective: P. L. 87-834, \$ 18(a)(2)

P. L. 87-834, # 18(a)(2):

Amended Code Sec. 2034 by deleting "(except real property situated outside of

the United States)". Effective with respect to estates of decedents dying after October 16. 1962, subject to the qualifications set forth in § 18(b). See amendment note for Code Sec. 2031(a).

[Sec. 2035]

SEC. 2035. TRANSACTIONS IN CONTEMPLATION OF DEATH.

[Sec. 2035(a)]

(a) GENERAL RULE.—The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, in contemplation of his death.

Source: Secs. 811(c)(1)(A), 811(1), 1939 Code, substantially unchanged.

Sec. as Amendments: amended effective: P. L. 87-834, § 18(a)(2)

P. L. 87-834, \$ 18(a)(2):
Amended Code Sec. 2035(a) by deleting "(except real property situated outside of

the United States)". Effective with respect the Officer States). Effective with respect to estates of decedents dying after October 16, 1962, subject to the qualifications set forth in § 18(b). See amendment note for Code Fec. 2031(a).

[Sec. 2035(b)]

(b) APPLICATION OF GENERAL RULE.—If the decedent within a period of 3 years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a general power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section and sections 2038 and 2041 (relating to revocable transfers and powers of appointment); but no such transfer, relinquishment, exercise, or release made before such 3-year period shall be treated as having been made in contemplation of death.

Source: Secs. 811(c)(1)(A), 811(l), 1939 Code, substantially unchanged.

[Sec. 2036]

SEC. 2036. TRANSFERS WITH RETAINED LIFE ESTATE.

[Sec. 2036(a)]

(a) GENERAL RULE.—The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which

Internal Revenue Code

Sec. 2936(a)

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UNITED STATES TAX COURT

ESTATE OF SUMNER GERARD, CHEMICAL BANK NEW YORK TRUST COMPANY, C. H. COSTER GERARD, SUMNER GERARD, JR., JAMES W. GERARD, II, EXECUTORS,

Petitioners,

Docket No. 5573-69

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

NOTICE OF APPEAL

Notice is hereby given that the Estate of Sumner Gerard, Chemical Bank New York Trust Company, C. H. Coster Gerard, Sumner Gerard, Jr., James W. Gerard, II, Executors, hereby appeal to the United States Court of Appeals for the Second Circuit from the decision of this court entered in the above-captioned proceeding on the 15th day of April, 1974.

Robert D. Whoriskey

Counsel for Petitioner

100 Mall Street

New York, New York 10005

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, CITY OF NEW YORK, COUNTY OF NEW YORK, ss.:

Alfred Bush being duly sworn,
deposes and says that he is over the age of 18. That on
the 27th day of February , 197.5 he served
copies of the within Appendix upon
Gilbert E. Andrews
attorney(s) for the
within named Respondent-Appellee , by de-
positing
a post-paid wrapper in a branch depository maintained
and exclusively controlled by the United States Post Office
at No. Greenwich & Vestry Streets
addressed to said attorney(3) for the Respondent Appellee
at No. Department of Justice, Washington, D.C. 20530
that being the address where he regularly kept an
office, and at which placehe regularly received mail.
Sworn to before me this 27th
day of February, 197.5
NOTARY PUBLIC, Str. of New York No. 31-9821352 Ouelified in New York County
Commission Expires March 80, 1976

